TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]

No. [redacted]

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

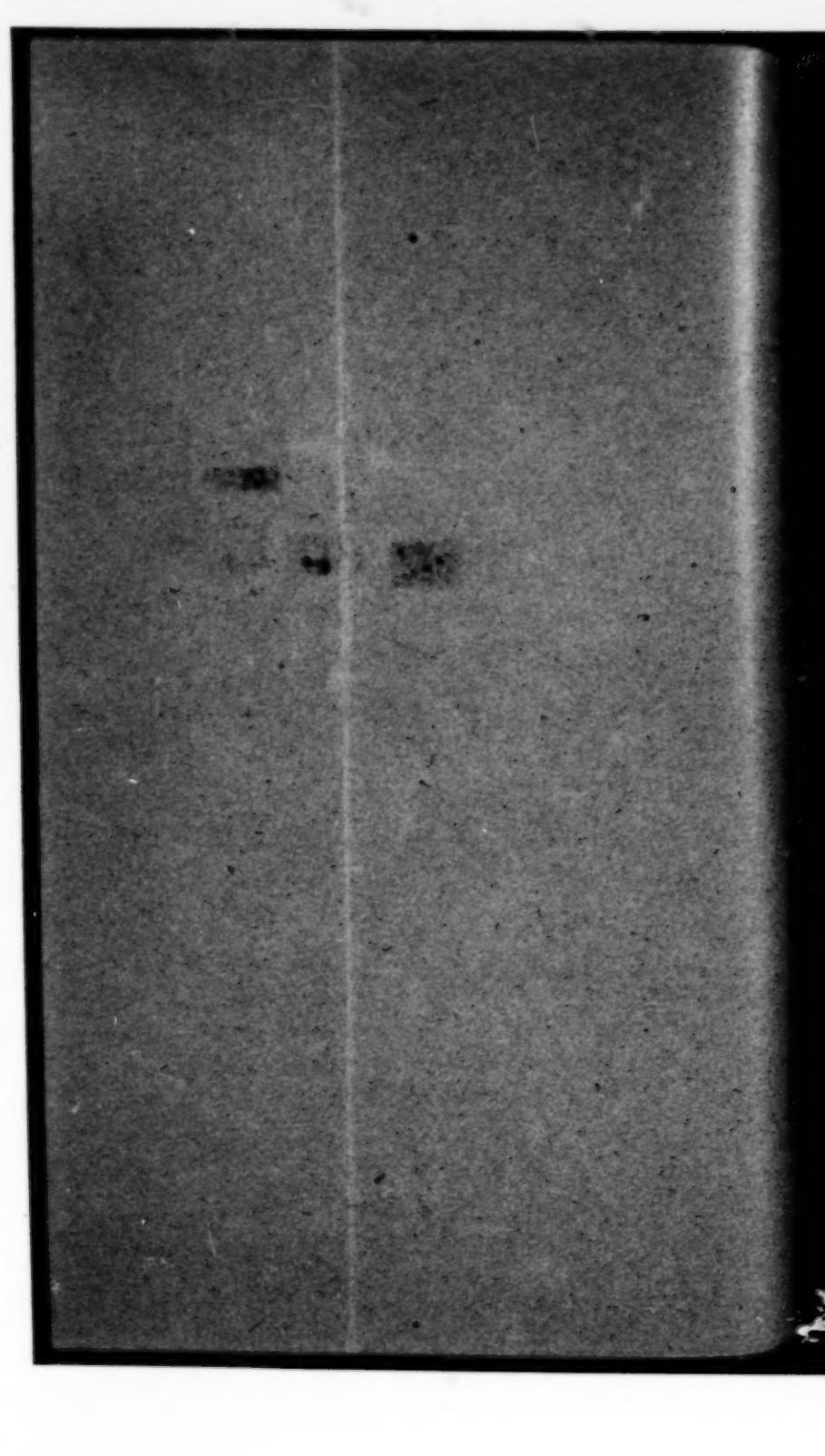
LEHIGH VALLEY RAILROAD COMPANY, LEHIGH VALLEY COAL COMPANY ET AL.

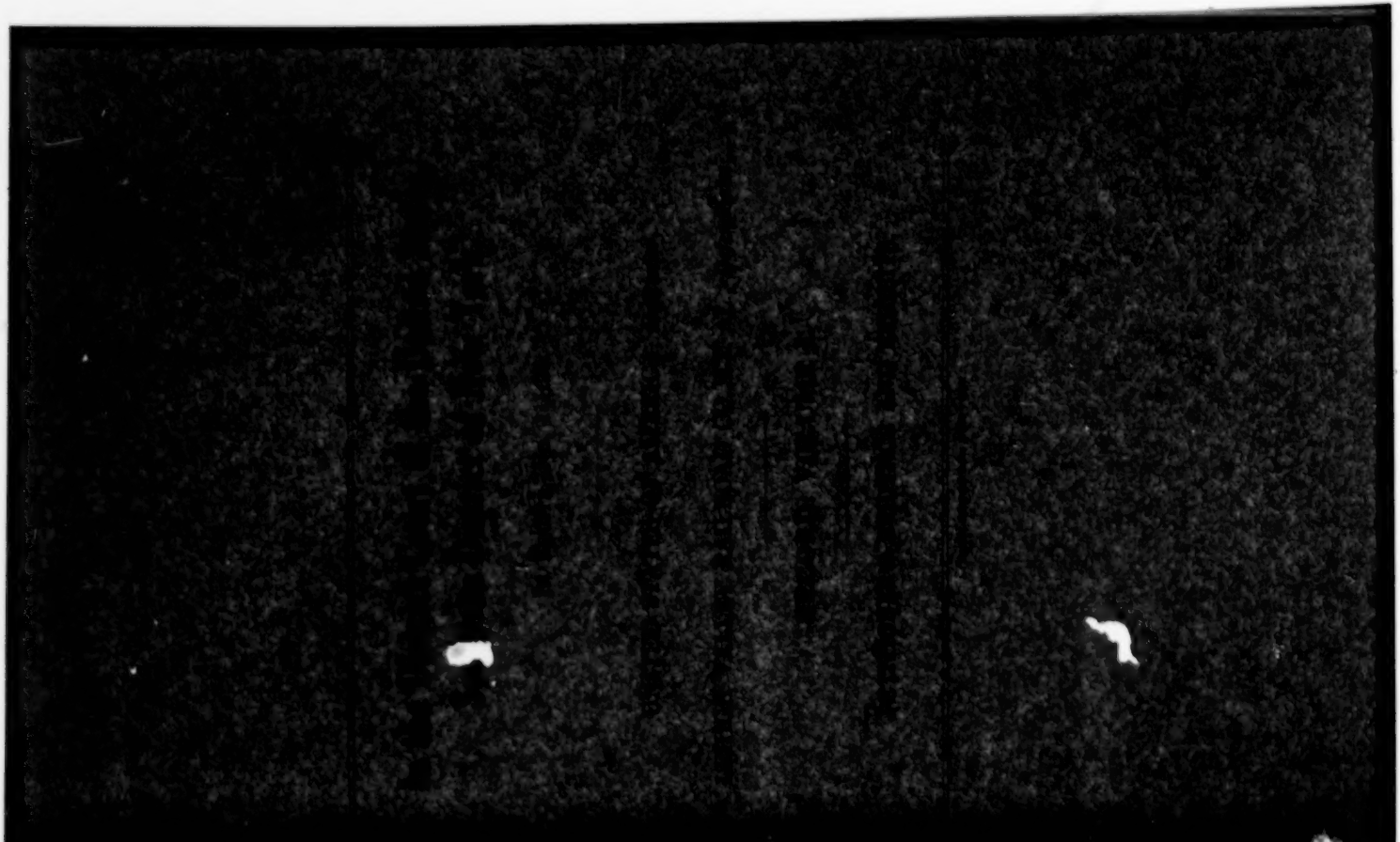
APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

RECORD: VOLUME I.

PETITIONER'S EVIDENCE AND EXHIBITS.

FILED FEBRUARY 24, 1915.





INDEX TO VOLUMES 1 & 2

	Page
Order appointing examiner	2
Examiner's certificate	4

GOVERNMENT WITNESSES.

Armstrong, Albert H.:	
Direct	270
Cross	276
Redirect	279
Recross	282
Baird, David G.:	
Direct	10
Cross	43
Redirect	57
Recalled:	
Direct	496
Recross	506
Rebuttal:	
Direct	545
Recalled:	
Direct	554
Burton, William J.:	
Direct	235
Cross	239
Recalled:	
Redirect	251
Recross	259
Re-redirect	262
Charb, William P.:	
Rebuttal:	
Direct	543
Edwards, John T.:	
Rebuttal:	
Direct	555
Cross	557
Evans, William R.:	
Direct	240
Foster, George H.:	
Direct	86
Cross	109
Redirect	139
Recross	156
Gildroy, George J.:	
Direct	351
Cross	357
Redirect	370
Grier, William T.:	
Direct	264
Recalled:	
Direct	311
Cross	332
Redirect	346
Rebuttal:	
Direct	568
Recalled:	
Direct	578
Direct	581

Howe, Dr. Herbert M.:
Direct 477
Kahn, Emil W.:
Direct 569
Cross 575
Machen, Arthur W., Jr.:
Direct 565
McQuade, Horace:
Direct 165
Cross 172
Redirect 172
Recross 173
Miller, George:
Direct 64
Cross 69
Redirect 75
Recross 82
Recalled:
Direct 393
Cross 394
Morrison, Julius I.:
Direct 196
Cross 212
Redirect 219
Recalled:
Direct 397
Cross 405
Redirect 408
Cross 415
Ruley, William W.:
Direct 285
Skeele, John W.:
Direct 466
Storck, George W.:
Direct 510
Cross 524
Redirect 537
Summers, William L.:
Direct 244
Cross 250
Thomas, E. B.:
Direct 426
Recross 462
Tompkins, Lewis A.:
Direct 177
Cross 192
Recalled:
Direct 546
Cross 552
Rebuttal:
Direct 581
Wertheim, Sanderson A.:
Direct 371
Cross 381
Redirect 388

GOVERNMENT EXHIBITS.

Numerical Order.

	Page offered.	Page printed.
1. Agreement between G. B. Markle Co. and L. V. Coal Co. (Ex. No. 1 in original petition)	6	
2. Lease by L. V. Railroad Co. to Yates-Lehigh Coal Co. (Ex. No. 2 in original petition)	6	
3. Contract dated March 1, 1912, between L. V. Coal Co. and L. V. Coal Sales Co., (Ex. No. 3, original petition)	7	
4. Lease dated March 1, 1912, by L. V. Coal Co. to L. V. Coal Sales Co. (Ex. No. 4, original petition)	7	
5-21 inclusive:		
Extracts from minutes of meetings of Directors, stockholders or Executive and Finance Committee of L. V. Railroad Co.		
(5) Directors' meeting Nov. 12, 1867,—acquisition of stock of Plymouth Coal Co.	8	585
(6) Directors' meeting Oct. 14, 1868—acquisition of Coal Ridge Improvement and Coal Co. and of Locust Mountain Coal and Iron Co.	8	586
(7) Directors' meeting July 7, 1871—agreement with Philadelphia Coal Co. for routing of its output	8	587
(8) Directors' meeting Dec. 20, 1876—acquisition of 2,400 shares of Highland Coal Co. and advance of $180,000 in bonds to L. V. Coal Co.	8	590
(9) Directors' meeting Feb. 13, 1877—amendment to minutes of meeting Dec. 20, 1876, *supra*.	8	590
(10) Directors' meeting March 11, 1884—loan of $70,000 by L. V. Railroad Co. to Florence Coal Co.; purchase by L. V. Coal Co. of the property of the Spring Mountain Coal Co.	8	590
(11) Directors' meeting Feb. 13, 1894—the Delaware, Susquehanna & Schuylkill R. R. trackage contract	8	591
(12) Stockholders' meeting June 21, 1896—resolution as to efforts to "bring all the collieries of the anthracite region into harmonious and equitable relations."	8	605
(13) Directors' meeting June 8, 1897—improvements at collieries of L. V. Coal Co.	9	606
(14) Directors' meeting Oct. 18, 1899—agreement by L. V. Coal Co. to ship all coal mined by it over the L. V. Railroad.	9	607
(15) Executive and Finance Committe meeting Jan. 10, 1905—purchase of entire outstanding stock of Wyoming Coal and Land Co.	9	609
(16) Executive and Finance Committee meeting June 14, 1905—adoption of report by Messrs. Baker and Thomas respecting reduction of rate of interest on $1,400,000 of L. V. Coal Co. bonds and the issue of $10,537,000 in certificates of indebtedness by L. V. Coal Co.	9	610
(17) Directors' meeting June 21, 1905, respecting manner of payment by L. V. Coal Co. for properties conveyed to it by L. V. Railroad Co.	9	614

Government Exhibits—Numerical Order.

	Page offered.	Page printed
(18) Directors' meeting July 19, 1906—certificates of indebtedness of $10,537,000 face value given by L. V. Coal Co. to L. V. Railroad Co. in exchange for stocks of other coal companies, retirement of bonds, etc.	9	614
(19) Executive and Finance Committee meeting Sept. 26, 1905—acquisition of Coxe Bros. & Co., Inc., the Delaware, Susquehanna and Schuylkill R. R. Co. and certain water companies	9	616
(20) Executive and Finance Committee meeting Jan. 9, 1912—resolution to recommend to L. V. Coal Co. the formation of L. V. Coal Sales Co.	9	619
(21) Directors' meeting Jan. 11, 1912—resolution to recommend to L. V. Coal Co. the formation of L. V. Coal Sales Co.	10	620
22. L. V. Railroad—officers, directors and executive committee for years 1890-1913 inclusive	10	622
23. D. S. & S. Railroad Co.—officers and directors for years 1905-1913 inclusive	11	625
24. Map showing L. V. Railroad (from 1913 annual report)	11	627
25. Notice to stockholders of L. V. Railroad Co. Jan. 19, 1912, announcing 10 per cent. dividend and arrangements for exercising preferential right to subscribe for stock of L. V. Coal Sales Co.	42	629
26. Resolution of Directors of L. V. Railroad Co., Oct. 13, 1891, authorizing guarantee of bonds of Delano Land Co.	43	632
27. Resolution of Directors of L. V. Railroad Co., Sept. 12, 1893, authorizing guarantee of $12,000,000 of L. V. Coal Co. bonds	43	634
28. Resolution of directors of Coxe Bros. & Co., Inc., June 28, 1906, providing that entire net earnings be paid over to L. V. Railroad Co., as they accrued, without formal declaration of dividends	43	635
29. Resolution of directors of Coxe Bros. & Co., Inc., April 18, 1911, rescinding resolution of June 28, 1906, *supra*, and declaring dividend amounting to net earnings for prior month	44	635
30. Letter of Jan. 11, 1912, from E. B. Thomas, President L. V. Railroad Co. to J. W. Skeele, Vice-President L. V. Coal Co., suggesting organization of L. V. Coal Sales Co.	46	636
31. Letter of Jan. 11, 1912, from J. W. Skeele, Vice-President L. V. Coal Co. to E. B. Thomas, President L. V. Railroad Co., enclosing resolutions adopted by directors of L. V. Coal Co. as to formation of L. V. Coal Sales Co.	47	637
32. Statement as to persons holding stock in both L. V. Railroad Co. and L. V. Coal Sales Co., as of Feb., 1912, and October and November, 1913	48	638
33. Statement showing percentage of total shipments of anthracite over L. V. Railroad furnished by L. V. Coal Co. or L. V. Coal Sales Co., during each fiscal year 1903-1913 inclusive	64	639
34. Lease of coal yard by L. V. Railroad Co. to John W. Obuck	105	640
35. L. V. Coal Co., officers, directors, and executive committee for years 1890-1913 inclusive	165	645

Government Exhibits—Numerical Order.

	Page offered.	Page printed.
26. Coxe Bros. & Co., Inc., officers and directors for years 1905-1914 inclusive	165	648
27. L. V. Coal Co., extracts from minutes of Board of Directors	165	
(1) Meeting January 9, 1877—respecting agreement between individual operators and railroad coal companies for regulating of coal trade		649
(2) Meeting March 11, 1884—purchase of coal properties of Spring Mountain Coal Co.		650
(3) Meeting Oct. 18, 1899, contract of L. V. Coal Co. to ship output over L. V. Railroad Co.		650
(4) Meeting Nov. 15, 1903—pledge with the Girard Trust Co. of the stock of L. V. Coal Co. which was issued in exchange for the stock of the Delano Land Co.		652
(5) Meeting June 30, 1905—acquisition of Hazleton Coal Co., Seneca Coal Co., Connell Coal Co., Kighter Coal Co., Warrior Run Coal Co., Wyoming Coal & Land Co.—also retirement of $7,080,000 L. V. Coal Co. bonds—also issue of $10,527,000 of certificates of indebtedness		653
(6) Meeting Aug. 8, 1905—reduction of interest rate from 5 per cent. to 4 per cent. on $1,400,000 L. V. Coal Co. bonds held by L. V. Railroad Co.		655
(7) Meeting Jan. 11, 1912—resolution authorizing formation of L. V. Coal Sales Co.		656
(8) Meeting Feb. 27, 1912—purchase by L. V. Coal Sales Co. from L. V. Coal Co. of stock of Coal on hand and accounts due for coal sold; also arrangements by L. V. Coal Co. for retirement or refunding of the $10,527,000 of its certificates of indebtedness held by L. V. Railroad Co.		658
38. L. V. Coal Co.—income accounts for fiscal years 1903-13 inclusive	165	661
39. Coxe Bros. & Co., Inc.—income accounts for fiscal years 1906-13 inclusive	165	662
40. Coxe Bros. & Co., Inc.—balance sheets for fiscal years 1905-1913 inclusive	166	663
41. Letter of June 30, 1905, from J. W. Platten, Second Vice-President L. V. Railroad Co., to G. N. Wilson, General Auditor L. V. Railroad Co. relating to certificates of indebtedness of L. V. Coal Co.	169	664
42. Contract of Oct. 7, 1905, between L. V. Railroad Co. and the Coxe Estate for the purchase of the stocks of Coxe Bros. & Co., Inc., D. S. & S. Railroad Co., and certain water companies	177	665
43. Coxe Bros. & Co., Inc.—journal entry showing balance of profit and loss accruing to L. V. Railroad Co., Oct. 31, 1905, as result of purchase of entire capital stock of Coxe Bros. & Co., Inc.	180	675
44. Coxe Bros. & Co., Inc.—balance sheet as of Sept. 30, 1905	183	676
45. Copy of certificate of indebtedness given June 30, 1905, L. V. Coal Co. to L. V. Railroad Co.	187	676
46. Copy of another certificate of indebtedness, given June 30, 1905, by L. V. Coal Co. to L. V. Railroad Co.	187	677
47. Bituminous coal sales by L. V. Coal Co., July 1, 1910, to June 30, 1913, excluding Snow Shoe Coal	189	678

Government Exhibits—Numerical Order.

		Page offered.	Page printed.
48.	Purchases of anthracite coal by L. V. Coal Co. during fiscal years 1911-1913	1193 1560	679
49.	Stock holdings of L. V. Railroad Co. in coal companies, being part of the Railroad's answer to Question 18, I. C. C. Docket, 4914	200	682
50.	Advances by L. V. Railroad Co. to L. V. Coal Company, being part of the Railroad's answer to Question 21, I. C. C. Docket 4914	204	683
51.	*United States* v. *Reading Company, et al.*, (226 U. S. 324)—mandate of Supreme Court, embodying original decree of United States District Court for Western District of Pa.	214	685
52.	*United States* v. *Reading Company, et al.*, (226 U. S. 324)—final decree entered by U. S. District Court, May 26, 1913	224	692
53.	*United States* v. *Reading Company, et al.*, (226 U. S. 324)—supplemental decree entered by U. S. District Court Jan. 29, 1914, exempting from the former decree certain coal purchase contracts	224	696
54.	*Former Commodities Clause Case* against *L. V. Railroad Co.* (reported in 213 U. S. 366, and 220 U. S. 257)—complete docket entries, equity suit	235	698
55.	*Former Commodities Clause Case*, copy of decree dismissing without prejudice amended petition against L. V. Railroad Co.	235	700
56.	L. V. Coal Sales Co.—minutes of first meeting of incorporators, Feb. 16, 1912; officers elected and stock issue authorized	236	701
57.	L. V. Coal Sales Co.—resolution adopted at Directors' meeting Feb. 16, 1912, giving stockholders of L. V. Railroad Co. preferential right to subscribe to stock of L. V. Coal Sales Co.	237	703
58.	L. V. Coal Sales Co.—extract from minutes of Directors' meeting Feb. 28, 1912, being a report by the President upon the proportion of capital stock of L. V. Coal Sales Co. subscribed by stockholders of L. V. Railroad Co.	237	704
59.	Letterhead of L. V. Coal Sales Co. showing trademark.	238	705
60.	L. V. Coal Sales Co.—income accounts for years ending March 31, 1913, and March 31, 1914	245	707
61.	L. V. Coal Sales Co.—balance sheet March 31, 1912	245	707
62.	L. V. Coal Sales Co.—balance sheet March 31, 1914	245	708
63.	Lease of coal yard at Syracuse, N. Y., by L. V. Coal Co. to Thomas W. Dalton, together with written assignment of reversionary interest from L. V. Coal Co. to L. V. Coal Sales Co.	256	708
64.	*Meeker & Co.* v. *L. V. Railroad Co.*, (21 I. C. C. 129)—opinion of I. C. C. accompanying reduction of rates from Wyoming region	268	712
65.	*Meeker & Co.* v. *L. V. Railroad Co.*, (23 I. C. C. 480)—opinion of I. C. C. accompanying reparation order	268	737
66.	*Coxe Bros. & Co.* v. *L. V. Railroad Co.*, (4 I. C. C. 535)—opinion of I. C. C. reducing rates on anthracite coal from the Lehigh Region to tidewater	270	762
67.	Anthracite tonnage shipped to New York Harbor by Railroad coal companies. Statement furnished by Bureau of Anthracite Statistics showing tonnage of each company from each region by months for years ending June 30, 1912, and June 30, 1913	273	1814 1839

Government Exhibits—Numerical Order.

	Page ordered.	Page printed.
69. Anthracite tonnage transported to all points by each of the anthracite railroads—statements furnished by		
70. Bureau of Anthracite Statistics for six-month period ending June 30, 1913 (Ex. 69), and for year ending December 31, 1913, compared with shipments for the corresponding periods during previous year	273	1822 1823
71. Temple Iron Co.—Secretary's letter of Jan. 11, 1914, as to its management since decree in case of *United States* v. *Reading Co.*, (226 U. S. 324), and as to recent sale to S. B. Thorne of stocks of its subsidiary coal companies	310	824
72. Temple Iron Co.—output of subsidiary coal companies and disposition thereof for the calendar years 1911-12, and up to June 1, 1914	310	831
73. Freight rates on anthracite from the mines to New York Harbor via each of the anthracite roads	311	833
74. Freight rates actually charged by the L. V. Railroad &		
75. Co. for transporting anthracite from the Lehigh and Schuylkill Regions (Ex. No. 74) and from the Wyoming Region (Ex. No. 75) to Perth Amboy, N. J. for transshipment by water during the month of November for the years 1893-1912 inclusive	312	1834 1835
76. Shipments of anthracite coal over L. V. Railroad for years 1904-13 inclusive—showing separately tonnage originating along the L. V. Railroad and tonnage received from other carriers	313	836
77. Letter, G. M. Cumming to C. E. Henderson, July 9, 1901	313	837
78. Letter, G. M. Cumming to Messrs. W. H. Sayre, C. E. Henderson, C. H. Warren, and B. D. Caldwell, July 11, 1901	313	838
79. Letter, T. P. Fowler to Messrs. Baer, Thomas, Underwood, and Truesdale, Oct. 29, 1906	316	839
80. Letter, T. P. Fowler to Geo. F. Baker, Nov. 1, 1906	317	840
81. Letter G. F. Brownell to Francis I. Gowen, Nov. 1, 1906	317	843
82. Letter, W. T. Grier to T. N. Jarvis, Nov. 14, 1906	317	844
83. Letter, J. D. Campbell to G. F. Brownell, Nov. 22, 1906	317	845
84. Letter, W. T. Grier to T. N. Jarvis, Jan. 22, 1907	321	847
85. Memorandum from E. B. Thomas to T. N. Jarvis, June 23, 1907	321	848
86. Letter, T. N. Jarvis to W. T. Grier, Jan. 24, 1907	321	849
87. Letter, E. B. Thomas to David Wilcox, Jan. 29, 1907	321	849
88. Letter, W. T. Grier to G. A. Bergen, T. B. Koons, R. S. Large, E. B. Crosley, and J. C. Anderson, Sept. 9, 1907	321	850
89. Letter, W. J. Mullin to W. T. Grier, Sept. 11, 1907	321	851
90. Letter, W. T. Grier to T. N. Jarvis, Sept. 17, 1907	321	851
91. Letter T. B. Koons to W. J. Mullin, Sept. 17, 1907	321	853
92. Letter, W. T. Grier to T. N. Jarvis, Sept. 24, 1907	321	854
93. Letter, E. B. Thomas to L. F. Loree, Oct. 16, 1907	321	857
94. Letter, W. T. Grier to W. J. Mullin, Jan. 7, 1909	322	857
95. Letter, J. A. Middleton to L. Wertheim Coal and Coke Co., March 2, 1911	379	858
96. Letter, L. Wertheim Coal and Coke Co. to J. A. Middleton, Feb. 18, 1911	380	860
97. Letter, L. Wertheim Coal & Coke Co. to J. A. Middleton, March 17, 1911	380	861
98, 99.		
100. Delaware, Susquehanna & Schuylkill R. R. Co.—income &		
101. accounts as reported to I. C. C. for years ending June 30, 1902, 1903, 1904, and 1905, together with comparative balance sheet June 30, 1904, and June 30, 1905	380	862 863 864 865

Government Exhibits—Numerical Order.

		Page offered.	Page printed.
102.	Leases of coal lands by L. V. Coal Co. to individual operators, containing covenants that coal mined from leased premises shall be shipped over L. V. Railroad—extracts from	395 to 1539	868
103.	Holdings of L. V. Railroad Co. in the stocks and bonds of certain coal companies and water companies; statement showing (1) par value, (2) book value, and (3) return on investment for each of the years such holdings continued	404	883
104. & 105.	Anthracite tonnage over L. V. Railroad for fiscal years 1912 and 1913—(1) produced by L. V. Coal Co. and by Coxe Bros. & Co. Inc., (2) purchased by L. V. Coal Co. up to March 1, 1912, and thereafter by L. V. Coal Sales Co., (3) produced by G. B. Markle Co., (4) produced by all other shippers	405	909 to 912
106.	Freight charges by L. V. Railroad Co. against L. V. Coal Co. and L. V. Coal Sales Co.—statement showing charges accruing each month from August, 1909, to November, 1912, and date of payment	411	915
107.	L. V. Railroad Co.—extracts from the annual reports for years—	491	920
	1868		920
	1869		920
	1871		921
	1872		921
	1881		922
	1884		922
	1885		922
	1890		923
	1892		924
	1894		924
	1895		926
	1896		929
	1897		931
	1898		931
	1900		931
	1901		933
	1902		934
	1903		938
	1904		938
	1905		939
	1906		942
	1907		943
	1908		945
	1909		946
	1910		947
	1911		947
	1912		947
	1913		949
108.	L. V. Coal Co.—extracts from annual reports for years—	491	949
	1909		949
	1910		949
	1911		951
	1912		952
	1913		954
109.	Storage plants in which coal sold by L. V. Coal Co. to L. V. Coal Sales Co. March 1, 1912, was contained—statement showing location of each	491	955
110.	Tonnage of each size and total tonnage of anthracite coal: (1) at each storage plant and (2) in transit, which was transferred by L. V. Coal Co. to L. V. Coal Sales Co., March 1, 1912	491	957

Government Exhibits—Numerical Order.

	Page offered.	Page printed.
111. Price paid to L. V. coal Co. by L. V. Coal Sales Co. for coal in storage and in transit March 1, 1912	492	961
112. Correspondence showing arrangement under which output of Coxe Bros. & Co., Inc. has been taken by the L. V. Coal Sales Co. since annulment of 65 per cent. contracts	492	962
113. Estimated cost per ton of selling and handling anthracite coal, L. V. Coal Sales Co	492	966
114. Losses of L. V. Co. during fiscal years 1894-1902, inclusive, as shown in annual reports of L. V. Railroad Co.	492	967
115. No exhibit No. 115.		
116. 65 per cent. contracts, list of those entered into by L. V. Coal Co. as given in *Old Reading Case*	493	968
117. L. V. Coal Co. and Coxe Bros. & Co., Inc.—list of purchase contracts and tonnage purchased during Nov. 1912	493	970
118. L. V. Coal Co.—balance sheets June 30, 1907-1912, inclusive	495	972
119. L. V. Coal Co.—balance sheet June 30, 1913	495	974
120. Anthracite bearing lands—statement showing as to each acquisition whether in fee or under lease by L. V. Coal Co., Coxe Bros. & Co., Inc., New York and Middle Coal Field R. R. & Coal Co., and Wyoming Valley Coal Co.: (1) grantor; (2) date acquired; (3) location; (4) acreage; (5) term; (6) royalty if any—also statement as to lands leased by above companies to other operato	496	975
121. Lease by Phila. & Reading R. R. Co. of the L. V. Railroad and the Central Railroad of New Jersey—extract from annual report of P. & R. R. R. Co. for 1892	498	987
122. Summary showing approximate money value of certain preferences given by L. V. Railroad Co. to L. V. Coal Co. since 1892	517	992
123. List of 50 largest stockholders of L. V. Railroad Co., together with shares held by them in L. V. Coal Sales Co. April 9-11, 1914	519	993
124. New York Harbor f. o. b. prices of anthracite coal from each of the three trade regions received by L. V. Coal Co. for the year 1907	521	995
125. General average f. o. b. prices received for anthracite coal at or near New York during the year 1907	521	997
126. Result of 65 per cent. contracts of L. V. Coal Co. in 1907, in respect of coal shipped from the Wyoming region over L. V. Railroad to Perth Amboy (New York Harbor) f. o. b. vessel	552	998
127. Statement showing anthracite tonnage and per cent. of total production mined by Railroad coal companies and other producers during calendar years 1910, 1911, and 1912	523	1001
128. Anthracite coal, general average f. o. b. prices New York Harbor, for calendar years 1909-1913, inclusive, by months, sizes, and regions	539	1007
129. Statement as to shipments of anthracite coal over L. V. Railroad for year ending June 30, 1907, showing number of tons and percentage of entire tonnage: (1) mined by L. V. Coal Co. and Coxe Bros. & Co., Inc.; (2) purchased by L. V. Coal Co. and Coxe Bros & Co. Inc.; (3) mined by G. B. Markle Co.; (4) mined by other shippers	1299	1019

Government Exhibits—Numerical Order.

	Page offered.	Page printed.
130. Table of anthracite freight rates via L. V. Railroad from mines to storage plants, March 1, 1912.....		1022
131. Extracts from minutes of directors' meetings, L. V. Railroad Co., Nov. 13, 1894 and May 12, 1896, relating to its interest in G. B. Markle & Co.....	541	1024
132. Table showing advances by L. V. Railroad Co. to coal companies and water companies and interest received therefrom each year	542	1026
133. Comparison of freight rates per net ton per mile on anthracite and other commodities via L. V. Railroad for years 1900-13 inclusive	542	1036
134. Comparison of freight rates per net ton per mile on anthracite coal and on all other freight from Hazleton, Pa. and Wilkes-Barre, Pa., to various points via L. V. Railroad, fiscal year 1913.....	542	1037
135. Statements showing number of cars, character of commodities, net tonnage, and freight charges on merchandise freight via L. V. Railroad from Hazleton, Pa. and Wilkes-Barre, Pa. to various points, fiscal year 1914	542	1038
136. Colored map showing control of anthracite lands by railroad coal companies	544	1039
137. Statement showing average capacity of coal cars and average tractive power of freight locomotives, L. V. Railroad, years 1895-1912 inclusive.....	544	1041
138. Royalties paid by Coxe Brothers & Co., Inc., 1906-14 inclusive	546	1042
139. L. V. Coal Co., average cost per ton of selling, handling and wastage, fiscal years 1909-11 inclusive	547	1043
140. Prices charged by L. V. Coal Co. to L. V. Railroad Co. for Railroad supply coal (anthracite). and number of tons sold each year, 1909-13 inclusive.....	550	1044
141. L. V. Coal Co. prices on Snow Shoe (bituminous) coal sold L. V. Railroad, and number of tons, 1907-13 inclusive	551	1044
142. Extract from minutes of directors' meeting, L. V. Railroad Co., July 13, 1897—resignation of E. P. Wilbur, President	555	1045
143. Diagram showing tracks connecting Plymouth Coal Company's Black Diamond Colliery with D. L. & W. R. Co. and L. V. Railroad Co.....	555	1047
144. "Increase in Prices of Anthracite Coal Following the Wage Agreement of May 20, 1912," House Doc. 1442, extracts from	562	1049
145. Income accounts, L. V. Railroad Co., fiscal years 1908-13	565	1057
146. Balance sheets, L. V. Railroad Co., 1908-13.....	565	1060
147. *Red Ash Coal Co.* v. *L. V. Railroad Co.*, complaint before Interstate Commerce Commission, tariff issued in adjustment thereof, and order of dismissal.....	568	1072
148. L. V. Railroad Co., anthracite tariff, I. C. C. No. D-508,	568	1085
149. Articles 16-17, Constitution of Pennsylvania.....	580	1099
150. Answer No. 6 of L. V. Railroad Co. to Interstate Commerce Commission in *Five Per Cent. Increase Case*..	580	1104
151. L. V. Railroad Co. anthracite tariff I. C. C. D-594.....	582	1108
152. Average prices received f. o. b. tidewater by L. V. Coal Co. for each size of anthracite coal each year 1901-11	583	1110

GOVERNMENT EXHIBITS CLASSIFIED ACCORDING TO SUBJECT MATTER.

		Page offered.	Page printed.
Anthracite Coal.			
Anthracite bearing lands—statement showing as to each acquisition whether in fee or under lease by L. V. Coal Co., Coxe Bros. & Co., Inc., New York & Middle Coal Field R. R. & Coal Co., and Wyoming Valley Coal Co.: (1) grantor; (2) date acquired; (3) location; (4) acreage; (5) term; (6) royalty if any—also statement as to lands leased by above companies to other operators	(Ex. 120)	496	975
Cost per ton of selling and handling anthracite coal—L. V. Coal Sales Co.	(Ex. 113)	492	966
Cost per ton of selling, handling, and wastage—L. V. Coal Co.	(Ex. 139)	547	1043
"Increase in Prices on Anthracite Coal Following the Wage Agreement of May 20, 1912," House Doc. 1442, extracts from	(Ex. 144)	562	1049
Prices charged by L. V. Coal Co. to L. V Railroad Co. for railroad supply coal (anthracite), and number of tons sold each year, 1909-13 inclusive	(Ex. 140)	550	1044
Prices of anthracite coal f. o. b. New York Harbor from each of the three trade regions received by L. V. Coal Co. for the year 1907	(Ex. 12[illegible])	521	995
Prices of anthracite coal f. o. b. New York Harbor for calendar years 1909-13 inclusive, by months, sizes and regions—general average	(Ex. 128)	539	1007
Prices received f. o. b. tidewater by L. V. Coal Co. for each size of anthracite coal each year 1901-11	(Ex. 152)	583	1110
Prices received for anthracite coal f. o. b. at or near New York during the year 1907—general average	(Ex. 125)	521	997
Production of anthracite coal, statement showing number of tons and per cent. of total production mined by railroad coal companies and by other producers during calendar years 1910, 1911, and 1912	(Ex. 127)	523	1001
Railroad control of anthracite lands, colored map	(Ex. 136)	544	1039
Railroad control of "railroad coal companies," statement showing			
Shipments of anthracite coal over L. V. Railroad for years 1904-13 inclusive—showing separately tonnage originating along the L. V. Railroad and tonnage received from other carriers	(Ex. 76)	313	836
Shipments of anthracite coal over L. V. Railroad for year ending June 30, 1907—statement showing number of tons and percentage of entire tonnage: (1) mined by L. V. Coal Co. and Coxe Bros. & Co., Inc.; (2) purchased by L. V. Coal Co. and Coxe Bros. & Co., Inc.; (3) mined by G. B. Markle Co.; (4) mined by other shippers. (Introduced in Deft's testimony p. 1112-1115)	(Ex. 129)		1019

Anthracite Coal—continued.

		Page offered.	Page printed.
Shipments to New York Harbor by Railroad coal companies. Statement furnished by Bureau of Anthracite Statistics showing tonnage of each company from each region by months for the years ending June 30, 1912 and June 30, 1913	(Ex's 67-68)	273	1818 1820
65 per cent. Contracts, statement showing results to L. V. Coal Co. in 1907, in respect of coal shipped from the Wyoming region to Perth Amboy (New York Harbor) f. o. b. vessel	(Ex. 126)	522	998
Total anthracite tonnage transported by each of the anthracite railroads—statement furnished by Bureau of Anthracite Statistics for six-month periods ending June 30, 1913, and December 31, 1913, compared with shipments for the same period during previous year	(Ex's 69-70)	273	1822 1823
Certificates of Indebtedness issued June 30, 1905, by L. V. Coal Co. to L. V. Railroad Co.			
Consideration for issue:			
Extract from minutes of L. V. Railroad Co.	(Ex. 18)	9	614
Extract from minutes of L. V. Coal Co.	(Ex. 37)	165	649
No interest to be paid:—letter of June 30, 1905, from J. W. Platten, Second Vice-President, L. V. Railroad Co., to G. N. Wilson, General Auditor L. V. Railroad Co.	(Ex. 41)	169	664
Report of Baker and Thomas respecting issue	(Ex. 16)	9	610
Retirement of issue in 1912—extract from minutes of L. V. Coal Co.	(Ex. 37)	165	649
Specimen copy	(Ex. 45)	187	676
Specimen copy	(Ex. 46)	187	677
Constitution of Pennsylvania.			
Articles 16-17	(Ex. 149)	580	1099
Coxe Brothers & Company, Inc.:			
Anthracite lands, statement as to acreage, etc.	(Ex. 120)	496	975
Balance sheets, fiscal years 1905-13, inclusive	(Ex. 40)	166	663
Balance sheets—Journal entry showing balance of profit and loss accruing to L. V. Railroad Co., Oct. 31, 1905, as result of purchase of entire capital stock of Coxe Bros. & Co., Inc.	(Ex. 43)	180	675
Balance sheet as of Sept. 30, 1905	(Ex. 44)	183	676
Contract for purchase of, by L. V. Railroad Co.	(Ex. 42)	177	665
Coxe Bros. & Co., Inc. v. *L. V. Railroad Co.*, (4 I. C. C. 535)—opinion of the I. C. C. reducing rates on anthracite coal from the Lehigh region to tide-water	(Ex. 66)	270	762
Dividend payments:—Resolution of directors, June 28, 1906, providing that thereafter entire net earnings be paid over to L. V. Railroad Co. as they accrue, without formal declaration of dividends	(Ex. 28)	43	635
Dividend payments:—Resolution of directors, April 18, 1911, rescinding resolution of June 28, 1906, *supra*, and declaring dividend amounting to net earnings for prior month	(Ex. 29)	43	635

Coxe Brothers & Company, Inc.—continued.

		Page offered.	Page printed.
Dividends paid to L. V. Railroad Co. each year	(Ex. 103)	404	883
Income accounts—fiscal years 1906-1913, inclusive	(Ex. 39)	165	662
Officers and directors for years 1905-1914, inclusive	(Ex. 36)	165	648
Lands owned or leased	(Ex. 120)	496	975
Purchase contracts and tonnage purchased during November, 1912, statement as to..	(Ex. 117)	493	970
Royalties paid by Coxe Brothers & Co., Inc., 1906-14 inclusive	(Ex. 138)	546	1042
Delaware, Susquehanna & Schuylkill Railroad Co.			
Acquisition of, by L. V. Railroad—			
Extract from L. V. R. R. Minutes	(Ex. 19)	9	616
Copy of purchase contract	(Ex. 42)	177	665
Income accounts as reported to I. C. C. for years ending June 30, 1902-05, together with comparative balance sheet June 30, 1904, and June 30, 1905	(Ex's 98, 99, 100 & 101)	390	862, 863, 864, 865
Officers and directors for years 1905-13 inclusive	(Ex. 23)	11	625
Freight Rates.			
Capacity of coal cars and tractive power of freight locomotives, L. V. Railroad, years 1895-1912 inclusive	(Ex. 137)	544	1041
Comparison of rates per ton per mile an anthracite and on other commodities via L. V. Railroad, 1900-13 inclusive	(Ex. 133)	542	1036
Coxe Bros. & Co. v. *L. V. Railroad Co.* (4 I. C. C. 535). Opinion of I. C. C. reducing anthracite rates from Lehigh Region to tide-water	(Ex. 66)	270	762
Five Per cent. Increase Case, answer of L. V. Railroad to question No. 6	(Ex. 150)	580	1104
Freight charges by L. V. Railroad Co. against L. V. Coal Co. and L. V. Coal Sales Co., statement showing charges accruing each month from August, 1909, to November, 1912, and date of payment	(Ex. 106)	411	915
Meeker & Co. v. *L. V. Railroad Co.* (21 I. C. C. 129). Opinion of I. C. C. accompanying reduction of anthracite rates from Wyoming Region to tide-water	(Ex. 64)	268	712
Meeker & Co. v. *L. V. Railroad Co.* (23 I. C. C. 480). Opinion of I. C. C. accompanying reparation order	(Ex. 65)	268	757
Rates actually charged by L. V. Railroad Co. during month of November of years 1893-1912 inclusive on anthracite to Perth Amboy, N. J., for transshipment by water: from the Lehigh & Schuylkill Region	(Ex. 74)	312	834
from the Wyoming Region	(Ex. 75)	312	835
Rates on anthracite via each of the anthracite railroads from the mines to New York Harbor	(Ex. 73)	811	823
Rates on anthracite via L. V. Railroad from mines to storage plants, Mar. 1, 1912	(Ex. 130)		1022
Shipments of merchandise freight via L. V. Railroad from Hazleton, Pa. & Wilkes-Barre, Pa., to various points, fiscal year 1914	(Ex. 135)	542	1038

Freight Rates—continued.

		Page offered.	Page printed.
Tariff on anthracite I. C. C. No. D-508, L. V. Railroad Co.	(Ex. 148)	568	1085
Tariff on anthracite I. C. C. No. D-508, supplement No. 14	(Ex. 147)	568	1072
Tariff on anthracite I. C. C. No. D-594	(Ex. 151)	582	1108
G. B. Markle Company.			
Agreement between G. B. Markle Co. and L. V. Coal Co. (Ex. No. 1 in original petition)	(Ex. 1)	6	
Lehigh Valley Coal Company.			
Advances of money by L. V. Railroad Co. to L. V. Coal Co.:			
Answer of L. V. R. Co. to Question 21, I. C. C. Docket 4914	(Ex. 50)	204	683
Extracts from minutes of L. V. Railroad Co.	(Ex's 8-9)	8	590
Table showing advances by L. V. Railroad Co. to various coal and water companies and interest received thereon each year	(Ex. 132)	542	1026
Acquisition of anthracite properties in 1905	(Ex's 17, 18)	9	614
Annual Reports, extracts from, for years— 1909) 1910) 1911) 1912) 1913)	(Ex. 108)	491	949
Anthracite lands, statement as to acreage, dates of acquisition, etc	(Ex. 120)	496	975
Balance sheets June 30, 1907-12 inclusive	(Ex. 118)	495	972
Balance sheet June 30, 1913	(Ex. 119)	495	974
Bituminous coal sales July 1, 1910, to June 30, 1913, excluding Snow Shoe coal	(Ex. 47)	189	678
Bond guarantee, resolution of Board of Directors of L. V. Railroad Co. authorizing guarantee of $12,000,000 L. V. Coal Co. bonds	(Ex. 27)	43	634
Certificates of indebtedness given June 30, 1905, by L. V. Coal Co. to L. V. Railroad Co.:			
Report of Baker and Thomas respecting issue	(Ex. 16)	9	610
Consideration for issue—			
Extract from minutes of L. V. R. R. Co.	(Ex. 18)	9	614
Extract from minutes of L. V. Coal Co.	(Ex. 37)	165	653
No interest to be paid—letter from Platten to Wilson	(Ex. 41)	169	664
Retirement in 1912, extract from L. V. Coal Co. minutes	(Ex. 37)	165	658
Specimen copy	(Ex. 45)	187	676
Specimen copy	(Ex. 46)	187	677
Colliery improvements, action of L. V. Railroad as to	(Ex. 12)	9	606
Contract with G. B. Markle Co. (Ex. 1 in original petition)	(Ex. 1)	6	
Contract with L. V. Coal Sales Co. (Ex. 3, original petition)	(Ex. 3)	7	
Contract of L. V. Coal Co. to route output over L. V. Railroad	(Ex. 14)	9	607
	(Ex. 37)	165	649
Cost per ton, selling, handling and wastage of anthracite coal, L. V. Coal Co., fiscal years 1909-11 inclusive	(Ex. 139)	547	1043

Lehigh Valley Coal Company—continued.

		Page offered.	Page printed.
Freight charges by L. V. Railroad Co.—by months from August, 1909, to Nov. 1912, and date paid	(Ex. 106)	411	915
Income accounts—fiscal years 1903-1913, inclusive	(Ex. 28)	165	661
Lease of coal yards, etc., to L. V. Coal Sales Co., March 1, 1912, (Ex. 4, original petition)	(Ex. 4)	7	
Lease of coal yard at Syracuse, N. Y., by L. V. Coal Co. to Thomas W. Dalton, together with written assignment of reversionary interest from L. V. Coal Co. to L. V. Coal Sales Co.	(Ex. 63)	258	708
Leases of coal lands to individual operators, containing covenants that all coal mined from leased premises shall be shipped over L. V. Railroad	(Ex. 102)	{395 {539	868
Losses during fiscal years 1894-1902, inclusive, as shown in annual reports of L. V. Railroad Co.	(Ex. 114)	492	967
Minutes of Board of Directors, extracts from	(Ex. 37)	165	649
(1) Meeting June 9, 1877—respecting agreement between individual operators and Railroad Coal companies for regulation of coal trade			649
(2) Meeting March 11, 1884—purchase of coal properties of Spring Mountain Coal Co.			650
(3) Meeting of Oct. 18, 1899, embodying contract to ship output of L. V. Coal Co. via L. V. Railroad Co.			650
(4) Meeting Nov. 18, 1903—pledge with the Girard Trust Co. of the stock of L. V. Coal Co., which was issued in exchange for the stock of the Delano Land Co.			652
(5) Meeting June 30, 1905—acquisition of Hazleton Coal Co., Seneca Coal Co., Connell Coal Co., Righter Coal Co., Warrior Run Coal Co., Wyoming Coal and Land Co.—also retirement of $7,050,000 L. V. Coal Co. bonds—also issue of $10,537,000 of certificates of indebtedness.			653
(6) Meeting Aug. 8, 1905—reduction of interest rate from 5 per cent. to 4 per cent. on $1,400,000 L. V. Coal Co. bonds held by L. V. Railroad Co.			655
(7) Meeting Jan. 11, 1912—resolution authorizing formation of L. V. Coal Sales Co.			656
(8) Meeting Feb. 27, 1912—purchase by L. V. Coal Sales Co., from L. V. Coal Co. of stock of coal on hand and accounts due for coal sold; also arrangements by L. V. Coal Co. for retirement or refunding of the $10,537,000 of its certificates of indebtedness held by L. V. Railroad Co.			658
Officers, directors and executive committee for years 1890-1913 inclusive	(Ex. 35)	165	645

Lehigh Valley Coal Company—continued.

		Page offered	Page printed
Organization of L. V. Coal Sales Co., letter of Jan. 11, 1912, from J. W. Skeele, Vice-President L. V. Coal Co. to E. B. Thomas, President L. V. Railroad Co., enclosing resolutions adopted by directors of L. V. Coal Co.	(Ex. 31)	47	637
Percentage furnished by L. V. Coal Co. of total shipments of anthracite over L. V. Railroad during each fiscal year 1903-1913, inclusive, statement showing	(Ex. 33)	64	639
Percentage of total anthracite tonnage over L. V. Railroad during fiscal year 1907 mined by L. V. Coal Co. and other coal companies	(Ex. 129)	1299	1019
Same for fiscal years 1912 and 1913	(Ex's. 104-105)	495	(909 (912
Preferences received from L. V. Railroad Co. since 1892—approximate money value.	(Ex. 122)	517	992
Prices of anthracite coal, f. o. b. New York Harbor from each of the three trade regions received by L. V. Coal Co. for the year 1907	(Ex. 124)	521	995
Prices charged by L. V. Coal Co. to L. V. Railroad Co. for Railroad supply coal (anthracite) and number of tons sold each year, 1909-1913 inclusive	(Ex. 140)	550	1044
Prices charged by L. V. Coal Co. to L. V. Railroad Co. for Snow Shoe (bituminous) coal, and number of tons sold, 1907-1913 inclusive	(Ex. 141)	551	1044
Prices received f. o. b. tide-water by L. V. Coal Co. for each size of anthracite coal during each year 1901-11	(Ex. 152)	583	1110
Purchases of anthracite coal:			
65 per cent. contracts, list of, as given in *Old Reading Case*	(Ex. 116)	493	968
Purchase of anthracite coal—fiscal years 1911, 1912, and 1913	(Ex. 48)	(193 (550	679
Purchase contracts and tonnage purchased during Nov. 1912	(Ex. 117)	493	970
Reduction of interest rate from 5 to 4 per cent. on $1,400,000 L. V. Coal Co. bonds, extract from L. V. Railroad minutes	(Ex. 16)	9	610
Stored Coal:			
Storage plants which contained coal sold to L. V. Coal Sales Co.	(Ex. 109)	491	955
Statement showing tonnage by sizes and total tonnage of anthracite coal: (1) at each storage plant, (2) en route, which was transferred by L. V. Coal Co. to L. V. Coal Sales Co., March 1 1912	(Ex. 110)	491	957
Statement showing price paid to L. V. Coal Co. by L. V. Coal Sales Co. for coal in storage and in transit March 1, 1912	(Ex. 111)	492	961
65 per cent. Contracts, statement showing results of in year 1907 as applied to shipments by L. V. Coal Co. from the Wyoming region to Perth Amboy	(Ex. 126)	522	998

Lehigh Valley Coal Sales Company.

Lehigh Valley Coal Sales Company:		Page offered.	Page printed.
Balance sheet March 31, 1912	(Ex. 61)	245	707
Balance sheet March 31, 1913	(Ex. 62)	245	708
Contract dated March 1, 1912, with L. V. Coal Co. (Ex. No. 3, original petition)	(Ex. 3)	6	
Cost per ton of selling and handling anthracite coal	(Ex. 113)	492	966
Freight charges by L. V. Railroad Co. by months, from March, 1912, to Nov., 1912, and dates paid	(Ex. 106)	411	915
Income accounts—years ending March 31, 1913, and March 31, 1914	(Ex. 60)	245	707
Lease dated March 1, 1912, by L. V. Coal Co. to L. V. Coal Sales Co., (Ex. No. 4, original petition)	(Ex. 4)	7	
Lease of coal yard at Syracuse, N. Y., by L. V. Coal Co. to Thomas W. Dalton, together with written assignment of reversionary interest from L. V. Coal Co. to L. V. Coal Sales Co.	(Ex. 63)	258	708
Letter head showing trademark of L. V. Coal Sales Co.	(Ex. 59)	238	705
Minutes of first meeting of incorporators, Feb. 16, 1912; officers elected and stock issue authorized	(Ex. 56)	236	701
Minutes of Directors' meeting Feb. 16, 1912; adoption of resolution giving stockholders of L. V. Railroad Co. preferential right to subscribe to stock of L. V. Coal Sales Co.	(Ex. 57)	237	703
Minutes of Directors' meeting Feb. 28, 1912; report by the President upon the proportion of capital stock of L. V. Coal Sales Co., subscribed by stockholders of L. V. Railroad Co.	(Ex. 58)	237	704
Notice to stockholders of L. V. Railroad Co. Jan. 19, 1912, announcing 10 per cent. dividend and arrangements for exercising preferential right to subscribe for stock of L. V Coal Sales Co.	(Ex. 25)	42	629
Organization of,			
Letter of Jan. 11, 1912, E. B. Thomas, President L. V. Railroad Co., to J. W. Skeele, Vice-President L. V. Coal Co.,	(Ex. 30)	46	636
Letter of Jan. 11, 1912, J. W. Skeele to E. B. Thomas	(Ex. 31)	47	637
Resolution of Executive and Finance Committee of L. V. Railroad Co., Jan. 9, 1912	(Ex. 20)	9	619
Resolution of Directors of L. V. Railroad Co., Jan. 11, 1912	(Ex. 21)	10	620
Resolution of Directors of L. V. Coal Co., Jan. 11, 1912	(Ex. 37)	165	656
Percentage of total anthracite shipments over L. V. Railroad furnished by L. V. Coal Co. or L. V. Coal Sales Co. during each fiscal year 1903-13, inclusive	(Ex. 33) (Ex. 104) (Ex. 105)	64 405	639 1909 1912
Purchases of Anthracite Coal:			
Price paid to L. V. Coal Co. by L. V. Coal Sales Co. for coal in storage and in transit March 1, 1912	(Ex. 111)	492	901

Lehigh Valley Coal Sales Company—continued.

		Page offered	Page printed
Statement showing purchases during years 1912 and 1913	(Ex. 48)	193	679
Correspondence showing arrangement under which output of Coxe Bros. & Co., Inc., has been taken since annulment of 65 per cent. contracts	(Ex. 112)	492	962
Shares in L. V. Coal Sales Co. held by 50 largest stockholders of L. V. Railroad Co. April 9-11, 1914	(Ex. 123)	519	993
Stockholders in both L. V. Railroad Co. and L. V. Coal Sales Co., as of Feb., 1912, and October and November, 1913	(Ex. 22)	48	638
Storage Coal, acquired from L. V. Coal Co., March 1, 1912:			
Name and location of each storage plant	(Ex. 109)	491	955
Tonnage of each size and total tonnage: (1) at each plant and (2) in transit, March 1, 1912	(Ex. 110)	491	957
Price paid for coal in storage and in transit	(Ex. 111)	492	961
Lehigh Valley Railroad Company:			
Advances of money by L. V. Railroad Co. to L. V. Coal Co.:			
Answer of L. V. R. Co. to Question 21, I. C. C. Docket 4914	(Ex. 50)	204	683
Extracts from minutes of L. V. Railroad Co.	(Ex's 8-9)	8	590
Table showing advances by L. V. Railroad Co. to coal and water companies and interest received thereon each year	(Ex. 132)	542	1026
Agreement by L. V. Coal Co. to ship entire output via L. V. Railroad	(Ex. 14) (Ex. 27)	9 165	607 650
Anthracite tonnage for fiscal years 1912 and 1913, statement showing (1) proportion mined by L. V. Coal Co. and by Coxe Bros. & Co., Inc., (2) purchased by L. V. Coal Co. or L. V. Coal Sales Co., (3) mined by G. B. Markle Co., and (4) mined by all other shippers	(Ex's 104-106)	405	1910 1912
Anthracite tonnage for year ending June 30, 1907—statement showing number of tons and percentage of entire tonnage: (1) mined by L. V. Coal Co. and Coxe Bros. & Co., Inc.; (2) purchased by L. V. Coal Co. and Coxe Bros. & Co., Inc.; (3) mined by G. B. Markle Co.; (4) mined by other shippers	(Ex. 129)	1299	1019
Anthracite tonnage for years 1904-1913 inclusive—showing separately tonnage originating along the L. V. Railroad and tonnage received from other carriers	(Ex. 76)	213	836
Balance sheets, L. V. Railroad Co., 1908-13	(Ex. 146)	565	1060
Capacity of coal cars and tractive power freight locomotives, L. V. Railroad, years 1895-1912 inclusive	(Ex. 127)	544	1041
Contract of Oct. 7, 1905, between L. V. Railroad Co. and the Coxe Estate for the purchase of the stocks of Coxe Bros. & Co., Inc., D. S. & S. Railroad Co. and certain water companies	(Ex. 42)	177	665

Lehigh Valley Railroad Company—continued.

		Page ordered.	Page printed.
Commodities Clause Case against L. V. Railroad Co. (reported in 213 U. S. 366, and 220 U. S. 257):			
Complete docket entries, equity suit	(Ex. 54)	235	696
Decree dismissing without prejudice amended complaint	(Ex. 55)	235	700
Coxe Bros. & Co., Inc. v. *L. V. Railroad Co.*, (4 I. C. C. 535)—opinion of I. C. C. reducing rates on anthracite coal from the Lehigh region to tide-water	(Ex. 66)	270	762
Extracts from the annual reports for years	(Ex. 107)	491	920
1868			920
1869			920
1871			920
1872			921
1881			921
1884			922
1885			922
1890			922
1893			923
1894			924
1895			924
1896			926
1897			929
1898			931
1900			931
1901			931
1902			933
1903			934
1904			938
1905			938
1906			939
1907			942
1908			943
1909			945
1910			946
1911			947
1912			947
1913			947
Five Per Cent Increase case, answer of L. V. Railroad Co. to I. C. C. Question No. 6			949
Freight rates *actually charged* by the L. V. Railroad Co. for transporting anthracite coal from the Lehigh and Schuylkill regions (Ex. No. 74) and from the Wyoming region (Ex. No. 75) to Perth Amboy, N. J., for transshipment by water during the month of November for the years 1893-1912, inclusive	(Ex. 150)	580	1104
	(Ex's 74-75)	212	1824 1835
Freight charges *by* L. V. Railroad Co. against L. V. Coal Co. and L. V. Coal Sales Co., a statement showing charges accruing each month from August, 1909, to November, 1912, and the dates of payment	(Ex. 106)	411	915
Freight rates on anthracite via L. V. Railroad from mines to storage plants, March 1, 1913	(Ex. 130)		1023

Lehigh Valley Railroad Company—continued.

		Page offered	Page printed
Freight rates per net ton per mile on anthracite and other commodities via L. V. Railroad, comparison of, for years 1909-13 inclusive	(Ex. 133)	542	1036
Freight rates per net ton per mile on anthracite coal and on all other freight from Harleton, Pa. and Wilkes-Barre, Pa. to various points via L. V. Railroad, comparison of, for fiscal year 1913	(Ex. 134)	542	1037
Freight rates—statement showing number of cars, character of commodities, net tonnage, and freight charges on merchandise freight via L. V. Railroad from Harleton, Pa. and Wilkes-Barre, Pa. to various points, fiscal year 1914	(Ex. 135)	542	1038
Income accounts, L. V. Railroad Co. fiscal years 1908-13	(Ex. 145)	565	1057
Lease of coal yard by L. V. Railroad Co. to John W. Obuck	(Ex. 34)	105	640
Lease to Yates-Lehigh Coal Co. (Ex. No. 2 in original petition)	(Ex. 2)	6	
Letter of June 30, 1905, from J. W. Platten, Vice-President L. V. Railroad to G. N. Wilson, General Auditor L. V. Railroad Co., regarding certificates of indebtedness of L. V. Coal Co.	(Ex. 41)	169	664
Map showing L. V. Railroad (taken from 1913 annual report)	(Ex. 24)	11	627
Map showing ownership of anthracite lands by railroad coal companies	(Ex. 136)	544	1039
Meeker & Co. v. *L. V. Railroad Co.*, (21 I. C. C. 129; 23 I. C. C. 480):			
Opinion of I. C. C. accompanying reduction of rates from Wyoming Region	(Ex. 64)	289	712
Opinion of I. C. C. accompanying reparation order	(Ex. 65)	303	757
Minutes of meetings of Directors, stockholders or Executive and Finance Committee of L. V. Railroad Co.:			
Directors' meeting Nov. 12, 1867—acquisition of stock of Plymouth Coal Co.	(Ex. 5)	8	505
Directors' meeting Oct. 14, 1868—acquisition of stock of Coal Ridge Improvement & Coal Co. and of Locust Mountain Coal & Iron Co.	(Ex. 6)	8	506
Directors' meeting July 7, 1871—agreement with Phila. Coal Co. for routing of its output	(Ex. 7)	8	507
Directors' meeting Dec. 20, 1876—acquisition of 2,400 shares of Highland Coal Co. and advance of $180,000 in bonds of L. V. Coal Co.	(Ex. 8)	8	508
Directors' meeting Feb. 13, 1877—amendment to minutes of meeting of Dec. 20, 1876, *supra*	(Ex. 9)	8	509
Directors' meeting March 11, 1884—loan of $70,000 by L. V. Railroad Co. to Florence Coal Co.; purchase by L. V. Coal Co. of the property of the Spring Mountain Coal Co.	(Ex. 10)	8	509

Lehigh Valley Railroad Company—continued.

		Page offered.	Page printed.
Directors' meeting Oct. 13, 1891, resolution authorizing guarantee of bonds of Delano Land Co.	(Ex. 26)	43	633
Directors' meeting Sept. 12, 1893, resolution authorizing guarantee of $12,000,000 of L. V. Coal Co. bonds	(Ex. 27)	43	634
Directors' meeting Feb. 13, 1894—the Delaware, Susquehanna & Schuylkill R. R. trackage contract	(Ex. 11)	8	591
Directors' meeting Nov. 13, 1894 and May 12, 1896, relating to the interests of L. V. Railroad Co. in G. B. Markle & Co.	(Ex. 121)	541	1024
Stockholders' meeting June 21, 1896—resolution as to efforts to "bring all the collieries of the anthracite region into harmonious and equitable relations."	(Ex. 12)	8	605
Directors' meeting June 8, 1897—report upon improvements at collieries of L. V. Coal Co.	(Ex. 13)	9	606
Directors' meeting July 13, 1897—resignation of E. P. Wilbur, President	(Ex. 142)	555	1045
Directors' meeting Oct. 18, 1899—agreement by L. V. Coal Co. to ship all coal mined by it over the L. V. Railroad	(Ex. 14)	9	607
Executive and Finance Committee meeting Jan. 10, 1905—purchase of entire outstanding stock of Wyoming Coal & Land Co.	(Ex. 15)	9	609
Executive and Finance Committee meeting June 14, 1905—adoption of report by Messrs. Baker and Thomas respecting reduction of rate of interest on $1,400,000 of L. V. Coal Co. bonds and the issue of $10,537,000 in certificates of indebtedness by L. V. Coal Co.	(Ex. 16)	9	610
Directors' meeting June 21, 1905, respecting manner of payment by L. V. Coal Co. for properties conveyed to it by L. V. Railroad Co.	(Ex. 17)	9	614
Directors' meeting July 19, 1905—certificates of indebtedness of $10,537,000 face value given by L. V. Coal Co. to L. V. Railroad Co. in exchange for stocks of other coal companies; retirement of bonds, etc.	(Ex. 18)	9	614
Executive and Finance Committee meeting Sept. 26, 1905—acquisition of Coxe Bros. & Co., Inc., the Delaware, Susquehanna and Schuylkill R. R. Co. and certain water companies	(Ex. 19)	9	616
Executive and Finance Committee meeting Jan. 9, 1912—resolution to recommend to L. V. Coal Co. the formation of L. V. Coal Sales Co.	(Ex. 20)	9	619
Directors' meeting Jan. 11, 1912—resolution to recommend to L. V. Coal Co. the formation of L. V. Coal Sales Co.	(Ex. 21)	10	620

Lehigh Valley Railroad Company—continued.

		Page offered.	Page printed.
Notice to stockholders of L. V. Railroad Co., Jan. 19, 1912, announcing 10 per cent dividend and arrangements for exercising preferential right to subscribe for stock of L. V. Coal Sales Co.	(Ex. 25)	42	629
Officers, directors and executive committee for years 1890, 1913, inclusive	(Ex. 22)	10	622
Organization of L. V. Coal Sales Co.—			
Suggested by letter of Jan. 11, 1912, from E. B. Thomas, President L. V. Railroad Co. to J. W. Skeele, Vice-President L. V. Coal Co.	(Ex. 30)	46	636
Resolution of Executive and Finance Committee of L. V. Railroad Co., Jan. 9, 1912.	(Ex. 20)	9	619
Resolution of Directors of L. V. Railroad Co., Jan. 11, 1912	(Ex. 21)	10	620
Percentage of total anthracite shipments over L. V. Railroad furnished by L. V. Coal Co. or L. V. Coal Sales Co. during each fiscal year 1903-1913 inclusive	(Ex. 33)	64	639
Percentage of total anthracite tonnage mined by L. V. Coal Co. and other coal companies for fiscal year 1907	(Ex. 129)	1299	1018
For fiscal years 1912-1913	(Ex's 104-105)	405	1908 1911
Phila. & Reading R. R. Co., extracts from report of. for year 1892, relating to the lease by it of the L. V. Railroad and the Central Railroad of N. J.	(Ex. 121)	498	987
Preferences given by L. V. Railroad to L. V. Coal Co. since 1892, summary showing approximate money value of	(Ex. 122)	517	992
Prices charged by L. V. Coal Co. to L. V. Railroad Co. for Railroad supply coal (anthracite), and number of tons sold each year, 1909-13 inclusive	(Ex. 140)	550	1044
Prices charged by L. V. Coal Co. to L. V. Railroad Co. for Snow Shoe (bituminous) coal and number of tons sold, 1907-13 inclusive	(Ex. 141)	551	1042
Reduction of interest rate from 5 to 4 per cent. on $1,400,000 bonds of L. V. Coal Co. held by L. V. Railroad Co.	(Ex. 16)	9	610
Stock holdings in coal companies, being part of the Railroad's answer to Question 18 I. C. C. Docket 4914	(Ex. 49)	200	682
Stocks and bonds of coal companies and of water companies held by L. V. Railroad Co.—statement showing (1) par value; (2) book value, and (3) income therefrom for each of the years such holdings continued	(Ex. 103)	404	883
Stockholders in both L. V. Railroad Co. and L. V. Coal Sales Co., as of Feb. 1912, and Oct. and Nov., 1913	(Ex. 32)	48	638
Stockholders of L. V. Railroad Co., report of President of L. V. Coal Sales Co. giving proportion of stock of Coal Sales Co. subscribed by them	(Ex. 58)	237	704

Lehigh Valley Railroad Company—continued.

		Page offered.	Page printed.
Stockholders of L. V. Railroad Co., list of 50 largest, together with shares held by them in L. V. Coal Sales Co. April 9-11, 1914	(Ex. 123)	519	993
Tariffs on anthracite coal, issued by L. V. Railroad Co.:			
I. C. C. No. D-508	(Ex. 148)	568	1085
Supplement No. 14 to I. C. C. No. 4-508, Red Ash Coal Co. rate	(Ex. 147)	568	1072
I. C. C. No. D-504	(Ex. 151)	582	1108
Trackage agreement with D. S. & S. R. Co.	(Ex. 11)	8	591
Maps.			
Map of L. V. Railroad (taken from 1913 annual report)	(Ex. 24)	11	627
Map showing control of anthracite lands by railroad coal companies	(Ex. 136)	544	1039
Tracks connecting Plymouth Coal Company's Black Diamond Colliery with D. L. & W. R. Co. and L. V. Railroad Co.—diagram	(Ex. 143)	555	1047
Meeker & Co. v. L. V. Railroad Co. (21 I. C. C. 129; 23 I. C. C. 480.)			
Opinion of I. C. C. accompanying reduction of rates from Wyoming region	(Ex. 64)	273	818
Opinion of I. C. C. accompanying reparation order	(Ex. 65)	268	757
Plymouth Coal Company.			
Diagram of tracks connecting Black Diamond Colliery with D. L. & W. R. Co. and L. V. Railroad Co.	(Ex. 143)	555	1047
Red Ash Coal Co. v. L. V. Railroad Co.			
Complaint before Interstate Commerce Commission, tariff issued in adjustment thereof, and order of dismissal	(Ex. 147)	568	1072
Temple Iron Co.			
Management since decree in *United States* v. *Reading Co.*, (226 U. S. 324) and recent sale by it of stocks of its subsidiary coal companies to S. B. Thorne—letter of Jan. 11, 1914, from the secretary	(Ex. 71)	310	824
Output of subsidiary coal companies and disposition thereof for calendar years 1911-13, and up to June 1, 1914	(Ex. 72)	310	831
United States v. Reading Co. et al. (226 U. S. 324).			
Mandate of Supreme Court, embodying original decree of United States District Court for Eastern District of Pennsylvania	(Ex. 51)	234	685
Final decree entered by U. S. District Court, May 26, 1913	(Ex. 52)	234	692
Supplemental decree entered by U. S. District Court Jan. 29, 1914, exempting from the former decree certain coal purchase contracts	(Ex. 53)	234	696

ORDER APPOINTING EXAMINER.

At a Stated Term of the United States District Court for the Southern District of New York, held at the United States Court House and Post Office Building, in the Borough of Manhattan, in the City of New York, on the 16th day of June, 1914.

Present—Honorable JULIUS M. MAYER,
District Judge.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

LEHIGH VALLEY RAILROAD COMPANY, THE LEHIGH VALLEY COAL COMPANY, LEHIGH VALLEY COAL SALES COMPANY, COXE BROTHERS AND COMPANY, INC., DELAWARE, SUSQUEHANNA AND SCHUYLKILL RAILROAD COMPANY, NEW YORK AND MIDDLE COAL FIELD RAILROAD AND COAL COMPANY, THE G. E. MARKLE COMPANY, GIRARD TRUST COMPANY, EBEN B. THOMAS, LYMAN D. SMITH, EDWARD T. STOTESBURY, DANIEL G. REID, CHARLES STEELE, ABRAM NESBITT, GEORGE F. BAKER, GEORGE F. BAER, EDWARD B. SMITH, WILLIAM H. MOORE, EDWARD S. MOORE, WILLIAM R. BUTLER, HENRY B. COXE and FRED M. KIRBY,
Defendants.

October Term, 1913.
No. 11-129.
In Equity.
Order.

It appearing that the above entitled cause is at issue on the petition, and answers heretofore filed, and the

Court having read and filed the affidavit of Arthur W. Machen, Jr., Special Assistant to the Attorney-General, verified June 9, 1914, in which it appears that there are good and exceptional causes for the appointment of an Examiner to take testimony in this suit, it is

ORDERED that B. W. B. Brown, 52 Wall St., of the City and State of New York, be and he is hereby designated and appointed as Special Examiner to take and report to the Court the evidence adduced or offered by the petitioner and defendants respectively, with full authority as Special Examiner, according to the rules and practice in such case made and provided, and it is further

ORDERED, that the depositions of D. G. Baird, H. J. McQuade and W. J. Burton as witnesses for the petitioner and of any other witnesses that may be produced by either party, be taken before said Examiner at such times within or without the District as he may appoint; and it is further

ORDERED, that the said Special Examiner be and he hereby is given power and authority to take the testimany herein either within or without this District and to report the same to the Court, according to the rules and practice thereof; and it is further

ORDERED, that the taking of the depositions on behalf of the petitioner begin forthwith upon reasonable notice to the defendants, and that after counsel for the petitioner has notified counsel for the defendants that the case in chief of the petitioner is closed, the defendants shall have thirty days thereafter within which to take the depositions of D. G. Baird, L. D. Smith and G. N. Wilson and any other witnesses that may be summoned and produced on behalf of the defendants, and it is further

ORDERED, that Charles P. Hanson be and he is hereby appointed stenographer to the Examiner to take the testimony stenographically with authority to employ such additional stenographers to assist in the taking of said testimony as may be necessary; and it is further

ORDERED, that the fees of the said Examiner and the expenses for stenography and typewriting in the taking

and transcribing of the said testimony and the filing of same in this Court shall be fixed according to the rules and practice of the Court. 9

JULIUS M. MAYER,
U. S. District Judge.

We agree to the entry of the above order.

H. SNOWDEN MARSHALL,
Attorney for Petitioner.
EDGAR H. BOLES,
EVERETT WARREN,
F. W. WHEATON,
Attorneys for Defendant. 10

Dated, June 16th, 1914.

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EXAMINER'S CERTIFICATE.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA, Petitioner, AGAINST 14 LEHIGH VALLEY RAILROAD COMPANY, *et al.* Defendants.	June, July and August Sessions, 1914. In Equity No. 11-129.

I, B. W. B. BROWN, duly appointed by the Court as Special Examiner to take the testimony in the above entitled cause either within or without this District, and to report the same to the Court, do hereby certify that, 15 beginning pursuant to notice on the 22nd day of June, 1914, and continuing from time to time thereafter, I have taken or caused to be taken and recorded all the testimony of the witnesses produced and the exhibits offered on the part of the petitioner on the examination in chief and in rebuttal, as well as all the proceedings connected therewith, the signing of the testimony by the witnesses respectively being waived by counsel; and that the following is a complete and true record of all such testimony, exhibits, and proceedings before the 16 Examiner beginning on June 22, 1914, and ending with the proceedings on August 6th, 1914, and including Government Exhibit No. 1 to Government Exhibit No. 152 inclusive.

IN WITNESS WHEREOF I have hereunto set my hand this day of September, 1914.

B. W. B. BROWN,
Special Examiner.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,
Petitioner,

AGAINST

Lehigh Valley Railroad Company, The Lehigh Valley Coal Company, Lehigh Valley Coal Sales Company, Coxe Brothers and Company, Inc., Delaware, Susquehanna and Schuylkill Railroad Company, New York and Middle Coal Field Railroad and Coal Company, The G. B. Markle Company, Girard Trust Company, Eben B. Thomas, Lyman D. Smith, Edward T. Stotesbury, Daniel G. Reid, George F. Baker, George F. Barr, Edward B. Smith, William H. Moore, Edward S. Moore, William R. Butler, Henry B. Coxe, and Fred M. Kirby,

Defendants.

Before B. W. B. Brown, Esq., Special Examiner.

New York, June 22, 1914.

Hearing held pursuant to notice at room 100, United States Court House and Post Office Building, City of New York, on the 22nd day of June, 1914, at 10 o'clock A. M.

21 APPEARANCES:

ARTHUR W. MACHEN, JR., ESQ., and THURLOW M. GORDON, ESQ., on behalf of the Petitioner.

E. H. BOLES, ESQ., on behalf of the Lehigh Valley Railroad Company, Delaware, Susquehanna and Schuylkill Railroad Company and the individual defendants.

EVERETT WARREN, ESQ., on behalf of the Lehigh Valley Coal Sales Company.

By agreement of all counsel present, the hearing was
22 adjourned to No. 143 Liberty Street, room 1016, to proceed at once.

Hearing resumed at 143 Liberty Street, Room 1016, 10.30 o'clock A. M.

APPEARANCES:

The counsel above numerated, and

F. W. WHEATON, ESQ., on behalf of the Lehigh Valley Coal Company, Coxe Brothers and Company, Inc.,
23 and New York and Middle Coal Field Railroad and Coal Company.

SILAS W. HOWLAND, ESQ., of Messrs. Root, Clark, Buckner & Howland, on behalf of the Girard Trust Company, as trustee.

Mr. Machen: I offer in evidence **Exhibit No. 1,** filed with the petition, being an agreement between G. B. Markle & Company and the Lehigh Valley Coal Company, dated December 30th, 1889.

I assume it is agreed that it is a correct copy of the
24 contract and may be received in evidence the same as if it were the original?

Mr. Wheaton: That is agreed to.

Received in evidence and marked **Government Exhibit No. 1** of this date.

Mr. Machen: I now offer in evidence **Exhibit No. 2,** filed with the petition, being copy of a lease from the Lehigh Valley Rail Way Company to the Yates-Lehigh Coal Company, dated June 1st, 1909.

Received in evidence and marked **Government Exhibit No. 2** of this date. 25

Mr. Machen: And I assume likewise that this is admitted to be a true copy and will be received in evidence to the same effect as the original duly proved?

Mr. Boles: Yes; no objection.

Mr. Machen: I also offer in evidence **Exhibit No. 3**, filed with the petition, being a copy of the contract, dated March 1, 1912, between the Lehigh Valley Coal Company and the Lehigh Valley Coal Sales Company.

Received in evidence and marked **Government Exhibit No. 3** of this date. 26

Mr. Machen: This likewise I believe is admitted?

Mr. Warren: This is admitted to be a correct copy of the original contract and the defendant waives proof of execution.

May I ask if it is not understood now that in transcribing the testimony the stenographer instead of writing out here—the contract—in extenso, will write them in a way which will appear as a separate volume of testimony, namely, exhibits?

Mr. Machen: Yes, we will have a separate volume of 27 exhibits. The exhibits will be printed separately.

I also offer in evidence **Exhibit No. 4**, filed with the petition, being a copy of a lease, dated March 1st, 1912, from the Lehigh Valley Coal Company to the Lehigh Valley Coal Sales Company.

Received in evidence and marked **Government Exhibit No. 4** of this date.

Mr. Machen: This is likewise admitted to be a true copy and will be received in evidence with the same effect as the original duly proved.

28

Mr. Warren: I ask the stenographer to note certain schedules attached, which should be printed, which are at the end of the contract, schedule A and B—are after the execution of the contract.

Mr. Machen: The Government having called for copies of certain extracts from the minutes of the Lehigh Valley Railroad Company, the same are now produced and offered and marked as follows:

29 Extracts from minutes of meeting of Board of Directors of Lehigh Valley Railroad Company, held November 12, 1867.

Received in evidence and marked **Government's Exhibit No. 5** of this date.

Extracts from minutes of meeting of Board of Directors of Lehigh Valley Railroad Company, held October 14th, 1868.

Received in evidence and marked **Government Exhibit No. 6** of this date.

30 Extracts from minutes of meeting of Board of Directors of Lehigh Valley Railroad Company, held July 11th, 1871.

Received in evidence and marked **Government Exhibit No. 7** of this date.

Extracts from minutes of meeting of Board of Directors of Lehigh Valley Railroad Company, held December 20th, 1876.

Received in evidence and marked **Government Exhibit No. 8** of this date.

31 Extracts from minutes of meeting of Board of Directors of Lehigh Valley Railroad Company, held February 13, 1877.

Received in evidence and marked **Government Exhibit No. 9** of this date.

Extracts from minutes of meeting of Board of Directors of Lehigh Valley Railroad Company, held March 11, 1884.

Received in evidence and marked **Government Exhibit No. 10** of this date.

32 Extracts from minutes of meeting of Board of Directors of Lehigh Valley Railroad Company, held February 13, 1894.

Received in evidence and marked **Government Exhibit No. 11** of this date.

Extracts from minutes of Stockholders' meeting of Lehigh Valley Railroad Company, held January 21, 1896.

Received in evidence and marked **Government Exhibit No. 12** of this date.

Extracts from minutes of meeting of Board of Directors of Lehigh Valley Railroad Company, held June 8, 1897. 33

Received in evidence and marked **Government Exhibit No. 13** of this date.

Extracts from minutes of meeting of Board of Directors of Lehigh Valley Railroad Company, held October 18, 1899.

Received in evidence and marked **Government Exhibit No. 14** of this date.

Extracts from minutes of meeting of Executive and Finance Committee of Lehigh Valley Railroad Company, held January 10, 1905. 34

Received in evidence and marked **Government Exhibit No. 15** of this date.

Extracts from minutes of meeting of Executive and Finance Committee of the Lehigh Valley Railroad Company, held June 14, 1905.

Received in evidence and marked **Government Exhibit No. 16** of this date.

Extracts from minutes of meeting of Board of Directors of Lehigh Valley Railroad Company, held June 21, 1905. 35

Received in evidence and marked **Government Exhibit No. 17** of this date.

Extracts from minutes of meeting of Board of Directors of Lehigh Valley Railroad Company, held July 19, 1905.

Received in evidence and marked **Government Exhibit No. 18** of this date.

Extracts from minutes of meeting of Executive and Finance Committee of Lehigh Valley Railroad Company, held September 26, 1905. 36

Received in evidence and marked **Government Exhibit No. 19** of this date.

Extracts from minutes of meeting of Executive and Finance Committee of Lehigh Valley Railroad Company, held January 9, 1912.

Received in evidence and marked **Government Exhibit No. 20** of this date.

37 Extracts from minutes of meeting of the Board of Directors of Lehigh Valley Railroad Company, held January 11, 1912.

Received in evidence and marked **Government Exhibit No. 21** of this date.

NOTE: It is agreed that these exhibits are true copies of extracts from the minutes of the Lehigh Valley Railroad Company, and shall be received in evidence with like effect as the original minutes.

38

David G. Baird, called on behalf of the Petitioner, being first sworn, testified as follows:

Direct Examination by Mr. Machen:

Q. Mr. Baird, what is your residence and occupation? A. I live at Beverly, New Jersey, and am secretary of the Lehigh Valley Railroad Company.

Q. How long have you been connected with the Lehigh
39 Valley Railroad Company? A. Forty-one years.

Q. In what capacities? A. Various.

Q. How long have you been secretary? A. Eleven years.

Q. What position did you hold prior to that time? A. Assistant secretary.

Mr. Warren: May I ask if the minutes you offer of the railroad company cover their dividend declaration in 1912?

Mr. Machen: No, I think not. It goes down
40 as far as that, but does—but that is not included.

Mr. Boles: It does cover the declaration of dividends in 1912.

Q. Please look at the paper which I now hand you, filed in evidence, marked **Government Exhibit No. 22**, and state what it is? A. The title reads: "Lehigh Valley Railroad Company. Statement showing officers, Executive Committee and Directors for the years indicated," the years being 1899 to 1913 inclusive.

Q. Was that made up under your supervision? A. This statement was not. The data from which it was made up was taken from my office. 41

Mr. Wheaton: It was checked by you?
The Witness: It was checked by my office.

Q. And is correct? A. I believe it to be correct.

Q. What office have you formerly held in connection with the Lehigh Valley Coal Company? A. I was secretary of the Lehigh Valley Coal Company for a few years. 42

Q. How many years? A. I do not recall.

Q. You cannot remember how long you were connected with the Coal Company? A. Not offhand, I cannot.

Q. You were secretary of the Coal Company prior to becoming secretary of the Railroad Company, were you not? A. I think I was.

Q. Please look at the paper which I now hand you, marked **Government Exhibit No. 23**, and state what it is? A. A blue print of the Delaware, Susquehanna & Schuylkill Railroad Company; a statement showing officers and directors for the years indicated. 43

Q. Is that paper a correct statement of the facts which it purports to state? A. I think it to be a correct statement.

Q. Will you prepare for us, Mr. Baird, a statement showing the various capacities in which you have been connected with the Lehigh Valley Railroad Company and its various subsidiaries, and also the Lehigh Valley Coal Company and the various other coal companies which have been affiliated with it from time to time, or with the railroad? A. Yes, sir. 44

Q. In what capacity were you first connected with the railroad? A. Bookkeeper.

Q. The Lehigh Valley Railroad Company is one of the companies known, or commonly known, as the Anthracite Coal Roads, is it not? A. Yes.

Q. Will you please look at the paper which I now hand you, marked **Government Exhibit No. 24**, and state what it is? A. It is a map of the system of the Lehigh Valley Railroad Company.

45 Q. Published by its authority? A. Yes.

Q. And I presume in a general way correct? A. I believe it to be correct.

Mr. Machen: We offer this paper in evidence.

Q. The Lehigh Valley Railroad Company operates the lines indicated in red on this map, does it? A. It does.

Mr. Howland: As of what year is that?

The Witness: 1913. This accompanied the report of 1913, this map did.

46

Q. Are the water lines which are shown on this map, particularly the Lehigh Valley Lake line—operating on the Lake Erie and the Lehigh Valley Towing Line on Long Island Sound operating in connection with the Lehigh Valley Railroad System? A. They are.

Q. And they are owned I believe by the Lehigh Valley Railroad Company? A. They are. I should qualify that by saying they are owned by the Lehigh Valley Transportation Company, the capital stock of which is

47 owned by the Lehigh Valley Railroad Company.

Q. And the Towing Line runs from tidewater near New York harbor to what point? A. New England points.

Q. Boston, Providence and so forth? A. I presume so.

Q. What is the little flag that I find in the upper right hand corner? A. Commonly called a trade-mark.

Q. That is used somewhat in the same way that the Pennsylvania Railroad Company uses the keystone as

48 a kind—— A. That is as I understand it; or as the Wabash uses theirs.

Q. A sort of trade-mark of the railroad, or flag of the railroad? A. That is right.

Q. This same device of the red flag with a black diamond in the centre and the letters "L V" in white in the diamond is very common on the ticket offices of the Lehigh Valley Railroad, isn't it? A. It is. As I have said, it is a trade-mark; it is commonly used and well known.

Q. As the trade-mark of the Lehigh Valley Railroad 49
Company or the Lehigh Valley Railroad system, is that correct? A. That is correct.

Q. What are the other anthracite coal roads in addition to the Lehigh Valley Railroad Company? A. I don't know that I can answer that accurately.

Q. Perhaps I may be able to assist your memory? A. I might omit some of them.

Q. Suppose you mention those that occur to you, the anthracite coal roads? A. Philadelphia & Reading Railway Company, Central Railroad Company of New 50
Jersey, Pennsylvania Railroad Company, Delaware, Lackawanna & Western Railroad Company, Erie Railroad Company, New York, Ontario & Western Railroad Company, New York, Susquehanna & Western Railroad Company, Delaware & Hudson Company.

Q. The Lehigh & New England? A. Lehigh & New England Railroad Company.

Q. The Central Railroad of New Jersey, did you mention that? A. I mentioned that.

Q. The Central Railroad of New Jersey is controlled 51
by the Philadelphia & Reading Railway Company, is it not? A. I don't know.

Q. Do you mean to say that you do not know whether the Philadelphia & Reading, or the Reading Company, controls the Central Railroad of New Jersey? A. I have heard it stated that the Reading Company does so control it.

Q. The Lehigh Valley Railroad Company acts upon that assumption, does it not? A. I don't know.

Mr. Boles: Acts? I object to that. What do 52
you mean?

Q. Is the New York, Susquehanna & Western Railroad Company controlled by the Erie Railroad Company? A. I have heard it so stated.

Q. It is a matter of common knowledge among railroad men, isn't it? A. I believe it to be so.

Q. Is the New York, Ontario & Western controlled by any other company? A. I have no knowledge of that.

53 Q. The Lehigh & New England Railroad Company is owned by the Lehigh Coal & Navigation Company, is it not?

Mr. Boles: I have been very patient about this, Mr. Machen, but I cannot see Mr. Baird's qualifications to answer these questions.

Mr. Machen: If he is not qualified he cannot answer them. But they are simply matters that I did not suppose there would be any question about.

54

A. As to the last question I don't know.

Mr. Boles: If there is no question about it, there is no object in answering the question.

Q. You can answer that, can you not? A. What is your question again?

Q. (Question read.) A. That I don't know.

Q. With the exception of the Delaware & Hudson, the Delaware, Lackawanna & Western and the Lehigh & 55 New England, each one of these anthracite coal roads controls or owns one or more coal companies engaged in mining anthracite coal?

Mr. Boles: I object.

A. I have no knowledge upon which to base an answer to the question.

Q. Isn't it a matter of common knowledge among persons engaged in the anthracite coal business that each of these railroads does—each of these railroad com- 56 panies I have mentioned or referred to does own the controlling interest? A. It may be, but I have no information.

Q. I believe the Lehigh Valley Railroad Company owns the entire capital stock of the Lehigh Valley Coal Company, doesn't it? A. It does.

Q. And also owns the entire capital stock of various railway companies, the Lehigh Valley Rail Way Company, the Lehigh Valley Railroad Company of New Jersey, the Delaware, Susquehanna & Schuylkill Railroad Company and others, does it not? A. It does.

Q. Are shares from time to time in these various com- 57
panies transferred to the Directors or persons about to become Directors in order to qualify them as such? A. Occasionally a few shares are transferred from one Director to another in order to qualify the party.

Q. When the shares are transferred into the name of the Director or person about to become a Director, what is done with the certificates?

Mr. Boles: The old certificates you mean?

Q. No, I mean the new certificates. A. They are re- 58
tained by the company.

Q. Endorsed by the Director, or Director to be, and returned to the Treasurer of the Lehigh Valley Railroad Company, are they? A. A power of attorney is executed by the new Director on the back of the certificate, or perhaps by a loose power of attorney, and again filed with the other stock belonging to the railroad company.

Mr. Howland: Some certificates I believe are with the Girard Trust Company, isn't that true?

The Witness: They are all there of most of the 59
companies.

Q. That has been the case for some time? A. It has.

Q. In the answer of the Girard Trust Company I find the following statement: "Referring now to the 39,300 shares of the stock of the Lehigh Valley Coal Company, it is stated that 110 of these shares stand on the books of the said Coal Company in the name of the several Directors of said Coal Company, but the certificates for said Directors' shares duly endorsed in blank by the 60
record holders thereof have been deposited with the Girard Trust Company as trustee aforesaid." Is that correct? A. That is correct.

Q. In other words, when the shares necessary to qualify Directors are subject to a mortgage or pledge the certificates are delivered to the trustee of the mortgage? A. That is right.

Q. But where they are not subject to mortgage or pledge they are kept in the treasury of the Railroad Company? A. That is correct.

61 Q. And that has been the case ever since you were connected with the company so far as you know? A. It has been the case ever since the existence of that mortgage.

Q. Yes, but where the shares of the Coal Company, Lehigh Valley Coal Company or other Coal Companies owned by the Railroad Company, were not subject to pledge, the certificates for the qualification shares—directors' qualification shares—were in each case endorsed by the director and returned to the Treasurer of the Railroad Company and retained by him, were they not?

62 A. That is right.

Q. Can you look at the annual reports of the Railroad Company, and, refreshing your recollection from them, state which, if any, of the bonds of the Lehigh Valley Coal Company now outstanding are guaranteed by the Lehigh Valley Railroad Company? A. I think I can. What year?

Q. At the present time? A. The Lehigh Valley Coal Company first mortgage bonds of the issue of 1892, bear the endorsement "Guaranteed by the Lehigh Valley Railroad Company."

63 Q. How many in amount are outstanding? A. $11,514,000 as of June 30th last—that is, 1913.

Q. Are these the only bonds of the Coal Company that are guaranteed by the Railroad Company? A. Those are the only bonds of the issue of the Lehigh Valley Coal Company.

Q. There are, however, bonds of companies which have been merged or consolidated into the Lehigh Valley Coal Company which are outstanding and which are guaranteed by the Railroad Company, are there not?

64 A. Yes.

Q. Which are they? A. The bonds of the Delano Land Company.

Q. State the amount, please? A. The amount outstanding being $1,082,000.

Q. Are any of these guaranteed bonds held by the Lehigh Valley Railroad Company? A. An examination of the Railroad Company's reports shows that they are not.

Q. Are there any bonds of the Lehigh Valley Coal Company now outstanding—in the hands of the public—

which are not guaranteed by the Railroad Company? 65
A. The Lehigh Valley Coal Company has an issue of debentures which, however, are not in the hands of the public. They do not bear the guarantee of the Lehigh Valley Railroad Company.

Q. They are all held by the Lehigh Valley Railroad Company? A. They are all so held.

Q. Then there are no bonds or debentures or notes of the Lehigh Valley Coal Company outstanding in the hands of the public which are not guaranteed by the Lehigh Valley Railroad Company? A. This report that 66
I have before me is of 1913; unless something has transpired this present year, there is not.

Q. Will you tell us what the divisions of the anthracite coal fields in Pennsylvania are, the trade divisions? A. Only from general knowledge.

Q. Yes? A. The Wyoming, the Lehigh, the Middle and the Schuylkill.

Q. The Middle includes the Lehigh, doesn't it? A. Not necessarily.

Q. You mean by "Middle" the Western? A. Sometimes called the Mahanoy. 67

Q. Does the Lehigh Valley Railroad Company reach all of these divisions? A. It does.

Q. Of the various railroads which you have mentioned as anthracite coal carriers, the Pennsylvania, the Reading, Delaware, Lackawanna & Western and the Central Railroad of New Jersey all reach tidewater at or near New York, do they not? A. I believe they do.

Q. How about the New York, Susquehanna & Western and the New York, Ontario & Western, and the Delaware & Hudson? A. The New York, Susquehanna & 68
Western reaches the tidewater.

Q. At New York or thereabouts? A. At New York. I have not sufficient information about the Delaware & Hudson or the New York & Ontario to give any definite answer about them.

Q. Won't you look at the annual report of the Lehigh Valley Railroad Company for the year 1903—no, I will take the year 1898—and state how it is entitled? A. Forty-fourth Annual Report of the Board of Directors

69 of the Lehigh Valley Railroad Company to the stockholders. Fiscal year ended November 30, 1898.

Q. How is each page of this report entitled? A. Forty-fourth Annual Report, Lehigh Valley Railroad Company.

Q. Please look at pages—how many pages are there altogether in the report? A. Fifty-two.

Q. Please look at pages 18 to 23 inclusive, and state whether or not they are entitled in the same way? A. They are.

Q. That is to say, Forty-Fourth Annual Report, Lehigh
70 Valley Railroad Company? A. Yes.

Q. What do they contain; in a general way—I don't mean for you to read the entire page? A. They contain information relating to the Lehigh Valley Coal Company.

Q. What does page 20 entitled likewise "Forty-fourth Annual Report, Lehigh Valley Railroad Company," contain? A. Income account of Lehigh Valley Coal Company.

Q. What does page 21, similarly entitled "Forty-
71 fourth Annual Report, Lehigh Valley Railroad Company," contain? A. General profit and loss account, Lehigh Valley Coal Company; adjustments from December 1st, 1897 to November 30th, 1898, inclusive.

Q. Now, please look at page 24 of this annual report, which is also entitled, I believe, "Forty-fourth Annual Report, Lehigh Valley Railroad Company," and state what it contains under that heading? A. It is a certificate of Stephen Little.

Q. In the form of a letter addressed to whom? A. Dated December 31, 1898, addressed to Alfred Walter,
72 Esquire, President Lehigh Valley Railroad Company.

Q. Won't you read this letter? A.

"New York, December 31, 1898.

Alfred Walter, Esq.,

President Lehigh Valley Railroad Company.

Dear Sir:

Complying with your request I beg to report that I visited Philadelphia, Pa., and in the Comptroller's office of your company there examined and verified:

I—The general profit and loss accounts of the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company respectively, with the adjustments therein for the fiscal year ended November 30, 1898. 73

II.—The earnings and operating expenses and income accounts of the Lehigh Valley Railroad Company and of the Lehigh Valley Coal Company respecively for the fiscal year ended November 30, 1898.

III.—Their general balance sheets of November 30, 1898. 74

"I therefore certify that the elements constituting such general profit and loss accounts, income accounts and balance sheets are fully and fairly set forth and reflect truthfully the transactions of the two companies respectively for the year under review, and their financial condition at the end thereof. As usual, every courtesy and facility necessary to my examination was freely extended to me and is hereby acknowledged. 75

Yours very truly,

STEPHEN LITTLE."

Q. Then Mr. Stephen Little certified that at the request of Alfred Walter, Esq., President of the Lehigh Valley Railroad Company, he had examined and verified the general profit and loss accounts of the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company respectively and the other matters set forth in this letter? A. The certificate so states. 76

Q. It is true, isn't it, that down to the year 1908 inclusive, the only reports, annual reports, of the Lehigh Valley Coal Company or any other subsidiary coal companies of the Lehigh Valley Railroad Company, were contained in or bound up with at least the annual reports of the Lehigh Valley Railroad Company, isn't that true? A. It was the practice up to that time to include information of that kind with the annual report of the Railroad Company.

77 Q. Now, take the year 1903 as an example, state how that is entitled on the binding? A. Forty-ninth Annual Report of the Board of Directors of the Lehigh Valley Railroad Company to the stockholders. Fiscal year ended June 30th, 1903.

Q. The left-hand pages in this report are entitled: "Report of Board of Directors"; are they not? A. They are.

Q. Throughout the volume? A. Yes.

Q. The right-hand pages Lehigh Valley Railroad
78 Company? A. Yes, sir.

Q. Now, please look on pages 13 to 14 of this report entitled as you have described, and state whether or not the following passage is not found therein: "A thorough investigation made during the past year by a committee of independent experts showed conclusively that the company's coal properties had been heretofore carried at a valuation far below their actual present value." A. Page 14 of the report of 1903 contains what you have read, yes, sir.

Q. And further down on pages 14 to 16 we find the
79 report of this committee, do we not, under the general head "Financial," addressed to the Board of Directors of the Lehigh Valley Railroad Company? A. We find on pages 14 to 15 and part of 16 there is set forth a report of the committee and it is addressed to the Board of Directors of the Lehigh Valley Railroad Company, dated July 15th, 1903.

Q. And that report contains the following passage, does it not: "In respect to anthracite coal properties; a careful and thorough investigation has been made by a
80 committee consisting of S. D. Warriner, General Manager of the coal properties, Joseph S. Harris of the Philadelphia & Reading Coal & Iron Company, W. A. Lathrop, President of the Webster Coal & Coke Company, Irving A. Stearns of Coxe Brothers & Company and A. B. Cochrane, mining engineer, Pottsville, Pa. This committee has spent several months in the study of the property and consideration of its values and all other questions connected with it?" A. It does.

81 Q. And the anthracite coal properties there referred to were the coal lands of the Lehigh Valley Coal Company and other subsidiary companies and not the stocks of these various companies, were they not? A. It refers to the properties of the Coal Company.

Q. The report commences, does it not, after being addressed as I have said to the Board of Directors of the Lehigh Valley Railroad Company "For several months attention has been given to the question of so adjusting the finances of this company as to provide not 82 only for the capital needs but for any unexpected demands upon it. As a foundation for any financial plan, and pursuant to a discussion at the last stockholders' meeting, a careful examination of the Company's anthracite coal properties and of its equipment has been made by its offices and supplemented by an independent committee?" A. It does.

Q. And the company's anthracite coal properties therein mentioned were not the stocks of the coal company, but the physical property of the Coal Company, was it not? A. Undoubtedly it was the property of the 83 Lehigh Valley Coal Company, the capital stock of which the Railroad Company owns.

Q. And by the Company's anthracite coal properties this report means the physical property of the Lehigh Valley Coal Company and the other subsidiary companies? A. It does.

Q. And as a result of that report the valuation of these coal properties on the books of the Lehigh Valley Coal Company was increased, was it not? A. If the report so states, then it was.

84 Q. Please look at page 31 of this report where the profit and loss accounts of the Lehigh Valley Railroad Company and of the Lehigh Valley Coal Company for the year ended June 30th, 1903 are stated, and state whether or not it does not appear that an increase was made in accordance with this report to the value of the coal properties of the Coal Company on the books of the Coal Company? A. In the statement of profit and loss for the year ended June 30, 1903 for the Lehigh Valley Coal Company and affiliated coal companies

85 therein contained, the item "Amount added to book value of the coal properties owned by the Lehigh Valley Coal Company as the result of an inventory and appraisement and in accordance with authorization of the Board of Directors $3,500,000."

Q. Please refresh your recollection by looking at this paper, which is admitted to be correct I believe, and state whether or not at this time there was any increase or change made in the valuation of the stock of the Lehigh Valley Coal Company on the books of the Lehigh
86 Valley Railroad Company? A. I have no charge of the accounting, but I believe the statement as shown to be correct.

Q. This is admitted, I believe, to be correct by counsel, and I am simply asking you whether—

Mr. Boles: I will admit that our books show that the stock of the Lehigh Valley Coal Company was carried June 30, 1903 at $500,000 book value and at $650,000 par value.

Mr. Machen: I am asking you to go back to
87 1902; start with June 30th, 1902.

Mr. Boles: $650,000 par value and $500,000 book value and those same figures are in the June 30th, 1903 report and also for June 30th, 1904.

Q. Now, pages 30 and 31—page 30 of the annual report of the Lehigh Valley Railroad Company for the year ending June 30th, 1903, contains what? A. Comparative income account for the years ended June 30th, 1903 and 1902.

Q. And in this income account is the income of the
88 Lehigh Valley Coal Company and affiliated coal companies included? A. At the foot of the page the net income of the Lehigh Valley Coal Company and affiliated companies is stated.

Q. And the whole is added up under the head of total net income, is it not? A. It is.

Q. Then on page 31, which is headed "Lehigh Valley Railroad Company," we find a profit and loss account of the Lehigh Valley Railroad Company for the year ended June 30th, and also a profit and loss account for

the same year of the Lehigh Valley Coal Company and affiliated coal companies, do we not? A. Yes, sir. 89

Q. No distinction being made between the various other subsidiary companies of the Lehigh Valley Coal Company? A. As stated, the affiliated Coal companies are included in the Lehigh Valley Coal Company.

Q. What do you find on pages 54 and 55, of this annual report, also under the heading of "Report of the Board of Directors, Lehigh Valley Railroad Company?" A. Contains balance sheet of June 30th, 1903, Lehigh Valley Coal Company and affiliated coal companies.

Q. And the various affiliated coal companies are all thrown together with the Lehigh Valley Coal Company in one consolidated balance sheet, with no distinction made between assets belonging to the one or to the other? A. From the heading of this statement I presume that that is true. 90

Q. Now, in a general way the reports from 1904 to 1908, both inclusive, are similar in all essential respects in so far as the treatment of the Lehigh Valley Coal Company is concerned to the report for 1903 which we have just considered at some length, are they not? A. I think they are. 91

Q. Do you know whether the practice of publishing the statements of the Lehigh Valley Coal Company and affiliated coal companies in the annual report of the Lehigh Valley Railroad Company to its stockholders was due to any specific regulation or any specific directions from time to time given of the stockholders or Directors of the Railroad Company? A. I do not.

Q. Won't you please look at the minutes of the meeting of the stockholders of the Lehigh Valley Railroad Company held January 16, 1883 and read the resolution there passed in reference to the publication of the annual report? A. (Reading.) "Resolved, that the report of the Board of Directors, of the General Superintendent and of the General Superintendent of the Lehigh Valley Coal Company, just read, be accepted and referred to the incoming Board for the publication of such parts as they may deem expedient." 92

93 Q. Now, look at the meeting of the newly elected Board of Directors held on the same day and state what action was taken by that Board in this matter? A. (Reading.) "On motion the reports of the President and General Superintendent and of the General Superintendent of the Lehigh Valley Coal Company were referred to the officers for the publication of such parts as they may deem expedient."

Q. I won't ask you to go through all the various years, but don't you find that similar resolutions were passed in 1884 for example? A. I would have to look; I do not
94 recall for each year.

Q. Just look at 1884; we will take one or two? A. 1884 contains a similar resolution.

Q. Take 1889 as an example; it is not worth while to go through all of them? A. A similar resolution appears in the stockholders' meeting of January 15th, 1889.

Q. Has this practice of publishing statements of the Coal Company in the report of the Railroad Company been continued to the present time, and if not, when was
95 it discontinued? A. In recent years it has been published with the railroad report, but in a separate pamphlet.

Q. When was that change made? A. I declare I cannot tell off-hand now when that began. From the report here 1889 appears to be the first year that a separate pamphlet report was made for the operations of the Lehigh Valley Coal Company.

Q. Now, from 1889 on down to the present time the practice has been, has it not, to publish the report of
96 the Coal Company and the Railroad Company at the same time, and to send both of them to the stockholders of the Railroad Company? A. The Lehigh Valley Coal Company publishes its own report and it is mailed to the stockholders with the Railroad report.

Q. And it is printed, is it not, on paper of the same character and same size as the report of the Railroad Company? A. Generally speaking that is true.

Q. Invariably, isn't it? A. So far as I know I believe it is the same.

Q. Look at that and refresh your recollection by looking at that? A. I believe them to be printed by the same printer, and they are generally alike. 97

Q. And the report for each year is bound in the same colored paper; that is to say, the report of the Coal Company for 1909 is bound in the same colored paper as the report of the Railroad Company for the same year? A. I believe that has been the rule throughout.

Q. In 1909 the report of the Railroad Company and the Coal Company was each bound in light blue, was it not, of the same shade? A. Yes, sir. 98

Q. In 1910 in a cream colored paper of the same shade—A. I believe that is a cream color.

Q. In 1911 a light brown? A. Help! I don't know what these colors are.

Q. They are both the same shade anyhow? A. They are the same shade undoubtedly.

Q. And 1912 in a darker brown? A. That is a brown I believe.

Q. And both are bound in paper of exactly the same shade? A. That is right.

Q. And in 1913 in a gray? A. That is a gray color I believe. 99

Q. How are the reports of the Railroad Company from 1909 to the present time entitled on the cover? A. Blank annual report of the Board of Directors of the Lehigh Valley Railroad Company to the stockholders. Fiscal year ended blank.

Q. And how are the reports of the Coal Company entitled? A. 1909. Annual report of the operations of the Lehigh Valley Coal Company. Fiscal year ended June 30, 1909. 100

Q. Not entitled "Annual report of the Coal Company to its stockholders"? A. No.

Q. Are these reports of the Coal Company distributed to the stockholders of the Railroad Company? A. They are.

Q. I know you so stated, but I was going to ask whether they were sent in the same envelope or cover? A. I believe they are.

Q. Where are the meetings for the election of Direc-

101 tors of the Lehigh Valley Coal Company held? A. At its general office.

Q. Where is that? A. At 228 South Third Street, Philadelphia.

Q. That is in a building owned by the Lehigh Valley Railroad Company, isn't it? A. It is.

Q. Do you know whether the Lehigh Valley Coal Company paid any rent or not to the Railroad Company for its office in that building? A. I do not.

Q. Has it any separate office there or any separate part
102 of the building set off as its office, or just simply used it common with the Railroad Company? A. At this time I do not think it has any separate room or designation. In former years it had separate rooms.

Q. Are the meetings of the Directors of the Coal Company held at this office also? A. I don't think so.

Q. They used to be, however, didn't they? A. They did.

Q. Up to about 1909? A. There or thereabouts. I cannot give the accurate date.

Q. Do you know what the action at law was which is
103 referred to in the extract from the minutes of the Executive and Finance Committee of the Lehigh Valley Railroad Company held, January 9th, 1912, which has been offered in evidence, and marked **Government Exhibit No. 20**? A. I know nothing about these things.

Q. You signed these minutes, didn't you? A. I don't think I did.

Q. You were secretary of the Railroad Company at that time, weren't you? A. I am and was.

Q. Don't you prepare the minutes, or aren't they pre-
104 pared under your direction? A. Not of the Executive and Finance Committee.

Q. They have a separate secretary? A. They have.

Q. Who prepares the minutes? A. They are prepared, the meetings of the Executive and Finance Committee, are held in New York. My office is in Philadelphia. For convenience the meetings are taken by an assistant secretary located in New York.

Q. Who was he at this time? A. Mr. E. A. Albright.

Recess taken until two o'clock P. M.

AFTER RECESS. 105

David G. Baird, recalled:

Direct Examination continued by Mr. Machen:

Q. Mr. Baird, do you know whether or not the Lehigh Valley Coal Company owns any bituminous coal lands? A. I believe it does.

Q. What are they and where are they situated? A. Of course I cannot answer for the Lehigh Valley Coal Company at the present day. They did acquire and own lands in centre County known as the Snow Shoe lands. 106

Q. Quite removed from the line of the Lehigh Valley Railroad? A. Oh, undoubtedly.

Q. Did they use the products of these bituminous lands while you were connected with the company for sale or for what purpose? A. I cannot answer that question because I had nothing whatever to do when I was connected with the Coal Company with any of its sales or its commercial business.

Q. Who would know about that? A. Some of the Coal Company people would know about it.

Q. I am going to ask you now to look at these minutes, particularly the earlier ones. I am going to start first with about 1870. I believe the Lehigh Valley Coal Company was formed by the consolidation of the Green Land Company and the Luzerne Coal & Iron Company, was it not? A. Yes, sir. 107

Q. Did the Lehigh Valley Railroad Company in its own corporate capacity ever own any coal lands— anthracite coal lands? A. It did.

Q. Do you happen to know how it acquired them? A. I do. 108

Q. Through what corporations? If so, please state them? A. It owned a body of coal lands in and about the city of Hazleton known as the Hazleton lands, which it acquired by the merger of the Hazleton Railroad Company into the Lehigh Valley Railroad Company.

Q. The lands had previously been owned by the Hazleton Railroad Company? A. Yes, sir; and on the other hand it acquired what is known as the Beaver Meadow lands by reason of a merger of the Beaver Meadow Rail-

109 road & Coal Company into the Lehigh Valley Railroad Co.

Q. Did it ever acquire other lands in its own self? A. No, sir.

Q. Didn't it for a long period of time have a committee on purchase of coal lands? A. I believe the record will so state.

Q. Wasn't the formation of the Lehigh Valley Coal Company the result of careful consideration of various plans for the organization of the coal department of the
110 railroad? A. I believe the directors did give consideration to plans for the formation of a company that could develop the coal lands which had been purchased, but which it did not take title to.

Q. Which had been purchased by subsidiary companies whose capital stock the railroad company owned I mean? A. That may be.

Q. Why didn't the railroad company take title? A. I cannot answer that.

Q. Won't you look at the minutes of the meeting of the board of directors of the Lehigh Valley Railroad
111 Company held May 10, 1870, and ascertain whether I am not correct in saying that at this meeting a report was presented of Mr. Robert H. Sayre superintendent and engineer of the railroad company, suggesting three various plans for dealing with the coal lands and leases which the railroad company owned, or in which it had an interest through the ownership of stock? A. What is my answer to that? I don't know the question.

Q. (Question read). A. You are correct.

Q. Look at the minutes of the meeting of the Lehigh
112 Valley Directors held on July 11, 1871, and state whether or not it does not appear from those minutes that the railroad company had purchased certain coal lands near Wilkes-Barre, and certain others near Mount Carmel? A. The record shows that certain coal lands had been purchased and other property.

Q. Certain coal lands had been purchased for $350,000? A. Yes, sir.

Q. Payable in the railroad company's seven per cent. bonds? A. Yes, sir.

Q. Now look back at the minutes of the meeting held June 14, 1870. A. Yes. 113

Q. And read the suggestion of the committee on coal lands as to the organization of a coal department. A. (Reading.) "The committee on coal lands report that they with Judge Packer and Mr. Sayre visited the property of the company in Wyoming Valley, viz: the leased property in Pleasant Valley back of Pittston, the Everhart property, in which the company have one-half interest, the West Pittston property in which they have a one-third interest, and on which a colliery is now working and the property leased of J. W. Hollenback near 114 Wilkes-Barre, and make the following suggestion: That immediate steps be taken to organize a coal department and develop that portion of the property held by the company under lease and on which they are bound to pay a minimum rent whether worked or not; that steps be taken to acquire a controlling interest in those properties in which the company now hold a half interest or less, and for the purchase of the lease of the upper or Hillman vein in Mill Creek Basin of the Hollenback property which would be developed in sinking a shaft 115 to the lower veins on which the company now have a lease, or probably by a slope from the outcrop at small expense."

Q. That is all that I want, unless you want to read some more? A. I do not.

Q. Will you look at the letter which was incorporated by the coal committee in its report presented at this same meeting addressed to A. Pardee, Esq., Chairman of Coal Committee and signed by Robert H. Sayre, S. M. E., insofar as it relates to the formation of the 116 coal department? A. It is a letter from Bethlehem, Pa., June 6th, 1870. A. Pardee, Esq., Chairman Coal Committee. My dear Sir. Our visit to Wyoming Valley and reflections on the subject induced me to offer the following suggestion for your consideration: Let us purchase an additional one-third interest in the Luzerne Coal & Iron Company (west of Pittston), then having entire control of the matter, increase the stock of the company to a sufficient amount to purchase from the

117 Lehigh Valley Railroad Company the leases we hold on the Pittston and Hollenback properties and develop them properly. The earnings of the present shaft at West Pittston——

Q. That is as far as I care to go, unless other counsel desire you to go on with the rest of it.

Mr. Boles: What was the date of that extract?

The Witness: The date of the meeting?

Mr. Bowles: Yes; the one you just read.

The Witness: June 14, 1870.

118

Q. Have you the coal company meetings here? The minutes? A. I am not the secretary of the company.

Q. I know you are not, but I want to use them in connection with your examination. I will go on to something else and come back to this. Do you know when the Green Land Company was incorporated? A. Yes, sir. May 29, 1871.

Q. Do you know whether or not that was done at the instance of the Lehigh Valley Railroad Company? A.

119 I do not.

Q. Or whether the railroad company owned the entire capital stock of the coal company from its incorporation? A. I think they owned the entire capital stock.

Q. And the Green Land Company was the predecessor of the Lehigh Valley Coal Company? A. Yes, sir.

Q. The name having been changed in 1875, I think you said, on consolidation with the Luzerne Coal & Iron Company? A. I think that is right.

Q. Now, isn't it a fact that for long stretches of time the business of the coal company was practically trans-

120 acted by the board of directors of the railroad company —— A. I would not like to say so.

Q. One moment—the transactions of its own board of directors being confined to purely formal matters, or almost entirely to purely formal matters, such as the election of officers? A. That is a pretty long question.

The Examiner: Let the stenographer read it.

(Question read.)

A. I would not like to say that that was a fact. 121

Q. Let us take some examples. Look at the minutes of the Coal Company, say for the year 1897, any meeting you choose to take and let us see what you find.

Mr. Boles: Were you secretary then, Mr. Baird?

The Witness: I was not secretary in 1897.

Mr. Boles: I object to the question.

Q. Have you looked at any? A. Yes, in April, 1897, they created a mortgage of five million dollars. 122

Q. I will ask you this question. How often did the Board of Directors meet in that year; how many times in the year 1897? A. Three times.

Mr. Boles: Now, wait. How do you know that?

Mr. Machen: That is what the minutes show.

Mr. Boles: Oh, well, that is different. There are minutes of three meetings.

The Witness: The minutes show that three meetings were held. 123

Q. Won't you look at the minutes of the meeting of directors of the railroad company held on April 9, 1897 and state whether you find therein the following extract from a report of the executive committee presented to the Board that day, namely: "The transfer of the title to the dock property at West Superior, Wisconsin, from the Lehigh Valley Transportation Company to the Lehigh Valley Coal Company was authorized. This property is now wholly occupied by the coal company, 124 which has defrayed the expense of the coal storage plant there erected at a cost exceeding $200,000." A. Yes.

Q. Now won't you look at the contemporaneous minutes of the meetings of the directors of the coal company and ascertain whether or not any note was taken there of this transaction? A. There appears to be no record of any meeting contemporaneous as shown by this minute book.

125 Q. I mean to say do you find any note of this transaction in the minutes of any meeting of the Board of Directors held that year? A. No.

Q. By Board of Directors I mean of the coal company? A. No.

Mr. Boles: Do they cover that year?

The Witness: Yes, sir.

Mr. Boles: Were you secretary that year?

The Witness: No, sir.

Mr. Boles: Do you not know whether they had
126 any other meeting or not?

The Witness: No, sir, I am speaking from the book.

Mr. Boles: As you have it before you?

The Witness: That is right.

Q. Now, won't you look at the minutes of the meeting of the Board of Directors of the railroad company held on June 11, 1895, and state whether or not a report of the executive committee was then presented containing
127 the following passage: "Resolved, that the sale of the coal lands known as the Hazleton and Beaver Meadow Estates to the Lehigh Valley Coal Company is hereby authorized for the consideration of $2,500,000, payable $2,000,000 in five per cent. gold bonds of the coal company secured by the mortgage of the above lands and the plants, in cash and the officers are hereby authorized to make the proper deeds of conveyance for the same under the corporate seal of this company." A. What you have just read appears as a resolution of the Executive Committee reported to the Board of Direc-
128 tors at a meeting held June 11, 1895.

Q. This plan was subsequently abandoned, was it not, and as a substitute the Hazleton Coal Company was incorporated to take title to these lands? A. Yes, sir.

Q. Now do you find in the minutes of the Lehigh Valley Coal Company at any time during the year 1895 any note of or reference to any possibility of the coal company acquiring title to the Hazleton claims or coal lands, or the pendency of any negotiations in regard to the same? A. It is not likely that there would be anything there because they did not take title.

Q. I am not asking you whether it is likely, but whether it is in point of fact there? A. If it is it should not be. They had nothing to do with it. 129

Q. The railroad company did not part with title either; but don't let us argue it though? A. Nothing in the minutes of the coal company about it.

Q. I will ask you to look at the minutes of the meeting of the Board of Directors of the railroad company of April 14, 1896? A. Yes.

Q. And read the report of the executive committee then presented as to the formation of the Hazleton Coal Company? A. (Reading) "The report of the executive committee was then presented and read as follows: In the report of the executive committee for June 11th, last, it was stated that on June 3rd the committee had adopted a resolution providing for the sale of our Hazleton and Beaver Meadow coal lands to the Lehigh Valley Coal Company. The executive committee has had under further consideration since that time various plans for the proper disposition of these lands. These lands of our Hazleton and Beaver Meadow companies, were acquired from the Hazleton Railroad Company, formerly the Hazleton Coal Company, and from the Beaver Meadow Railroad & Coal Company by the merger of those companies with the Lehigh Valley Railroad Company. The Beaver Meadow lands are under lease to the Cross Creek Coal Company; the Hazleton lands were under lease to A. Pardee & Company until the termination of that lease during the past year and the purchase of the improvements by the Lehigh Valley Coal Company. For full consideration of the whole matter it is now recommended that a new corporation under the Corporation Act of 1874 be organized to be called the Hazleton Coal Company, with a capital of $500,000 cash and a mortgage of $2,000,000; all the Hazleton and Beaver Meadow lands to be forthwith conveyed to such new corporation; the Beaver Meadow lands to be subject to the existing lease to the Cross Creek Coal Company, and the entire lands to be subject to the right of way of the Lehigh Valley Railroad Company as 130 131 132

123 now located or hereafter changed. Damages for coal left in to support the roadway due to such changes of location to be paid as they shall from time to time arise. A purchase money mortgage for $2,000,000 to be given by the Hazleton Coal Company."

Q. What action was taken on this report? A. No specific action. Wait a minute; wait a minute. (Reading) "On motion the resolution adopted by the executive committee on June 3rd, last, and reported on the 11th of the same month, authorizing the sale of the
124 Hazleton and Beaver Meadow coal lands to the Lehigh Valley Coal Company was rescinded and the following resolution was unanimously adopted in its place: Resolved that the officers of this company are hereby authorized and instructed to negotiate a sale of the said tracts to such party and upon such terms as to them may seem expedient, and to report the same to this board for its further action."

Q. Now look at the minutes of the meeting of board of directors of the railroad company held September 11, 1896? A. Yes.

135 Q. And read the resolution there adopted as to the conveyance of these lands to the Hazleton Coal Company, and as to the guarantee of the Hazleton Coal Company as to bonds? A. Do you want the preamble?

Q. No, I don't think so. A. (Reading) "Resolved, that the action of the officers of this company in regard to the sale of the Hazleton & Beaver Meadow Lands is hereby approved and confirmed.

"Resolved, that this company sell and convey to the Hazleton Coal Company, a corporation of the State of
136 Pennsylvania, for the consideration and upon the terms hereinafter named the lands and mineral and mining rights held and owned by this Company, situated in Luzerne and Carbon counties, Pennsylvania, and known respectively as the Hazleton mine, containing about 1875 acres, and the Beaver Meadow Mines containing about 625 acres. (Excepting and reserving the portions of said lands used for railroad purposes) together with all the buildings and improvements and all machinery, tools, fixtures and personal property of

every description owned by this company thereon; the 137
consideration or price thereof to be for the said Hazleton lands blank dollars and for the said Beaver Meadow lands blank, in all $2,500,000, whereof $2,000,000 is to be secured by a first mortgage to be made of such lands by the said Hazleton Coal Company to the Girard Life Insurance Annuity & Trust Company as trustee, the bonds for that amount secured by such mortgage to be delivered to this company upon the execution and delivery of the deeds and assurances for said premises; $450,000 is to be paid in capital stock at par of the said 138
Hazleton Coal Company and the balance, $50,000, is to be paid in cash; and the President or Vice-president of this company is hereby authorized and directed to affix his signature and the corporate seal of this company to be duly attested by the secretary to the two deeds and bill of sale for the said premises and property now submitted to this Board.

"On motion it was resolved that the Lehigh Valley Railroad Company guarantee the punctual payment of the principal and interest 2000 5 per cent gold bonds for 139
$1,000 each, due September 1st, 1936, secured by a first mortgage of the Hazleton Coal Company upon its property, improvements and so forth, and that the officers of the Lehigh Valley Railroad Company be, and they are, hereby authorized to place upon each of said 2000 bonds a certificate in substantially the form following and to affix its corporate seal thereto: 'For a valuable consideration the Lehigh Valley Railroad Company hereby guarantees to the holder of the within bond the punctual payment of principal and interest thereof when and as the same becomes payable.'" 140

Q. Now, please look at the extract from the minutes of the Board of Directors of the Railroad Company for the meeting held June 8th, 1897, which has been filed in evidence, marked **Government Exhibit No. 13**, and then refer to the minutes of the Coal Company during that year and state whether or not any reference is made in any of the minutes of the Coal Company to the various improvements suggested to be made to the property of the Coal Company in said exhibit? A. There appears

141 to be nothing in the Coal Company minutes for 1897 that has anything to do with that.

Q. Please look at the Railroad minutes for September 20th, 1899, and read so much of the report of the Comptroller as was presented at that meeting of the Railroad Board as relates to the funds of the Lehigh Valley Coal Company? A. At that meeting, taken from the report of the Comptroller, is the statement: "Lehigh Valley Coal Company funds remain the same with the exception to J. W. Skeele, to him advances have been made
142 as follows: September 11th, 1899, $5,000; September 16th, 1899, $5,000; total $10,000; total in hand of J. W. Skeele at this date, September 19th, 1899, $35,000."

Q. Is a reference to these funds in the hands of Mr. Skeele found in any contemporaneous—in the minutes of the Coal Company for this year? A. I will look. (Examining books.)

Q. Just one minute. I might ask another question first. Mr. Baird, I will ask this question: Please look at the minutes of the meeting of the Railroad Board for October 18th, 1899, and state whether you do not find
143 the following entry in a report from the Comptroller of the Railroad Company: "Lehigh Valley Coal Company—" A. L. V. C. Company it says here.

Q. Read the report as presented by the Comptroller? A. (Reading) "The following report was received from the Comptroller. L. V. R. R. Since last report September 19, 1899, $400,000 has been advanced to J. V. Laird, on account of Perth Amboy Towing Line; $250 in hands of E. R. Reets were transferred to A. B. Luce. L. V. C. Co. No additional advances have been made
144 for Lehigh Valley Coal Company working funds."

Q. Now, please look at the minutes of the Railroad Company for February 21, 1900, and read so much of the report of the Comptroller of the Railroad Company as relates to the funds of the Coal Company? A. From the report of the Comptroller: "No additions have been made to the Lehigh Valley Coal Co. working funds."

Mr. Boles: What is the date of that?

The Witness: February 21, 1900.

Q. Now, suppose you look at say the Railroad minutes 145
for September 19, 1900, and read the statement of the Comptroller in reference to changes in the working fund since the last report? A. (Reading) "The following statement of the Comptroller showing distribution of working funds since the last report was presented and read. L. V. Railroad July 1st, funds of $2000 account lighterage line; $500 account towing line; $500 account Bee Line, total $3,000. Transferred from G. S. Brantingham to Jonathan Moore, July 21, $2,500; July 24, $4,500, total $7,000. Advanced to Charles M. Taylor's 146
Sons, manager Philadelphia Trans-Atlantic Line, total to date $4,600. Lehigh Valley Coal Company, August 13, $1,800; advanced to J. W. Skeele and afterwards transferred to William S. Wolle.

Q. Now, refer to the minutes of the Coal Company and ascertain whether or not any reference was made in those minutes during the years 1899 and 1900 to any of these matters respecting the Coal Company's working funds which have been, as you have testified, reported in the Railroad Company minutes? A. No ref-
erence appears of those transactions in those years of 147
the Coal Company minutes.

Q. Now, let us take another year. Look at the Railroad minutes of March 16th, 1904, and read so much as relates to the purchase by the Lehigh Valley Coal Company of real estate in Chicago? A. From the minutes of the Board of Directors of the Lehigh Valley Railroad Company of March 16th, 1904: "The president reported that the Lehigh Valley Coal Company proposed to increase its facilities for local business in Chicago by the purchase of lands and the erection of the necessary im- 148
provements for two additional yards, the cost of the same not to exceed $175,000."

Q. Look at the minutes of the Coal Company during that year and state whether or not any reference is made to the acquisition of this property? A. From the minutes of the Lehigh Valley Coal Company of March 16th, 1904: "On motion, duly seconded, and by the affirmative vote of all present it was resolved that the President, be, and he hereby is, authorized to establish two

149 additional coal yards for the conduct of the Company's business at Chicago, one at the corner of 59th and Wallace Streets and the other at a point between Harrison & Congress Streets, at a total cost for the land and improvements of the two plants of between $150,000 and $175,000."

Q. Now, look at the minutes of the annual meeting of the stockholders of the Lehigh Valley Railroad Company held on January 15th, 1895, and read the resolution of Mr. John N. Hutchinson, recommending economy in all departments? A. (Reading.) "On motion of Mr.
150 John N. Hutchinson it was resolved that in as much as no dividend has been paid to the stockholders since July, 1893, and the report of the business of the road for the past year now submitted to the stockholders shows that none can reasonably be looked for in the near future, that with a view to curtailing expenses of the management of the property it is recommended to the incoming Board of Directors to introduce the most rigid economy in all the departments, both the Railroad and the Coal Company's and to abolish the offices of
151 such general officers of both companies as may not be strictly necessary for the proper conduct of the business of these companies."

Q. Please look at the minutes of the Railroad Company for March 20th, 1901, and state what appears from those minutes to have been the purchase price paid by the Railroad Company for the capital stock of the Connell Coal Company? A. From the minutes of the Board of Directors of the Railroad Company of March 20th, 1901, it appears that the purchase price of the capital
152 stock of the Connell Coal Company was $900,000.

Q. Now, look at the minutes of the Railroad Company for July 14th, 1905, and state what is there shown as to the price received by the Railroad Company from the Lehigh Valley Coal Company for the capital stock of the Connell Coal Company which, you have just testified, had been bought by the Railroad Company in 1901 at the price of $900,000? A. In this minute of July 14th, 1905, the capital stock of the Connell Coal Company was turned over to the Lehigh Valley Coal Company for the sum of $412,000.

Mr. Howland: Cash was that? 153

Mr. Machen: Certificates of indebtedness if I am not mistaken.

Mr. Howland: It was not stock, was it?

Mr. Machen: No.

The Witness: This meeting was June 27th, 1905.

Mr. Wheaton: That was authorized. It does not show that that was done.

The Witness: This Connell Coal Company is one of several that were turned over to the Coal Company—stock—the whole of them amounting to $2,605,000 and those items of account certainly were not—— 154

Q. Now, please look at the minutes of the Railroad Company for July 7th, 1901, and state what is there shown to be the purchase price paid by the Lehigh Valley Railroad Company for the capital stock of the Seneca Coal Company? A. The purchase price as shown in the minutes of that meeting is $1,000,000.

Q. Now, look at the minutes of the Railroad Company for July 14th, 1905, and state what the Railroad Company is there shown to have received from the Lehigh Valley Coal Company for the capital stock of the Seneca Coal Company which the Railroad Company had bought for the price of $1,000,000? A. $773,000. 155

Q. Look at the Coal Company minutes for June 21, 1905, and read so much as relates to the reduction of interest from 5 to 4% on the $1,400,000 of bonds of the Lehigh Valley Coal Company owned by the Railroad Company? A. (Reading.) "Whereas, all the bonds issued under this company's mortgage of October 1, 1892, to E. P. Wilbur Trust Company, trustee, amounting to $12,000,000, drawing interest at the rate of 5% per annum have been duly executed by the officers of this Company; have been certified by the trustee and are in coupon form for $1,000 each, having semi-annual coupons attached thereto for the sum of $25 each, and whereas, the Lehigh Valley Railroad Company is the owner of $1,400,000 of such bonds issued under mortgage, dated October 1, 1892, said bonds being numbered 156

157 10,601 to 12,000 inclusive, and, whereas, by agreement between the said Lehigh Valley Railroad Company and this company it is agreed that the rate of interest on said $1,400,000 in bonds owned by the Lehigh Valley Railroad Company be reduced from 5% to 4% per annum; resolved, that the rate of interest on the said $1,400,000 first mortgage 5% gold bonds of this company now owned by the Lehigh Valley Railroad Company, being bonds #10,601 to 12,000 inclusive shall be 4% per annum instead of 5% per annum.

158 "Resolved, that there be printed on said bonds the following words (On the face of said bonds) "By agreement with the holder of this bond the rate of interest thereon is reduced from 5% to 4% per annum." (On the bank of said bonds) "Rate of interest reduced to 4% per anum."

"Resolved that new coupon sheets of semi-annual coupons for $20 each, being at the rate of 4% per annum, be printed and attached to said bonds in place of the present coupon sheets which shall
159 be forthwith destroyed."

Q. How long had these bonds to run; when do they mature? A. Those bonds mature I think in 1933.

Mr. Boles: What was the date of that issue?

The Witness: The mortgage is dated October 1, 1892.

Q. Now, won't you please look at the Railroad minutes for November 22, 1904 and read so much as relates to the purchase of capital stock of the Lehigh & Hudson
160 River Railway Company? A. From the minutes of the Executive and Finance Committee of November 22, 1904: "The president stated that the 8,158 shares of Lehigh & Hudson River Railway Company's stock had been purchased for the account of the Pennsylvania Railroad Company, the Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, the Erie Railroad Company and the Central Railroad of New Jersey at an average price of $76 per

share, amounting to $620,008, and that he had authorized 161
the payment of $123,956 for this company's proportion of such stock, or 1631 shares at $76 per share. On motion, duly seconded, it was resolved that the action of the president in authorizing the above expenditure be and the same hereby is approved."

Q. What is the Lehigh & Hudson Railroad; where does it run from? A. I don't know that I can accurately describe, except that it is a railroad that reaches from Belvidere, New Jersey, in a northeasterly direction into New York State, somewhere about Campbell Hall.

Q. It is a link, isn't it, in general transportation from 162
the anthracite coal fields to New England via the Poughkeepsie Bridge? A. I don't think I can more accurately describe it than I have done in my previous answer owing to my lack of information.

Q. Do you know Mr. William R. Evans? A. Do I know him?

Q. Yes? A. I am not sure that I do.

Q. Do you know who he is? A. I am not sure that I do. I know several Mr. Evanses.

Q. The one who is assistant to the general sales agent 163
of the Lehigh Valley Coal Company? A. I know that gentleman, yes, sir.

Q. Do you know what position he now holds? A. I do not.

Q. Do you know Mr. Paul Moore? A. I do not.

Q. Please look at the minutes of the Railroad Company of June 22, 1910, and state whether or not the offer of new shares of stock which is contained in these minutes of the Railroad Company to the existing shareholders for subscription contained any provisions requiring a 164
stockholder to subscribe to all or none of his quota.

Mr. Boles: May I ask the Government what bearing the increase of stock of the Coal Company has in 1910 with this case?

Mr. Machen: You are welcome to ask, but I do not feel that I am bound to answer.

Mr. Boles: We can put the objection on the record and that is as far as we can go in this case, but let the record show an objection.

165 Mr. Warren: The counsel for the Government declines to indicate in which way they have a bearing on the case. I would like that noted, that counsel for the Lehigh Valley Railroad Company said that, and I ask for an objection.

Q. (Question read). A. Practically it does.

Q. This offer allowed the stockholder to assign his right to subscribe to any of the shares of stock to which he might be entitled, would it not?

166 Mr. Warren: I object to this question as counsel for the Lehigh Valley Coal Sales Company because the offer speaks for itself and it is not competent for the Government's counsel to ask the witness to construe it. He may file the minutes and let it——

Mr. Machen: In view of that objection I will ask the counsel for the Railroad Company to have prepared a transcript of the resolution.

167 Q. When you were secretary of the Coal Company and also of the Railroad Company it was your practice, wasn't it, to note in the minutes of the Railroad Company the execution of any paper under the corporate seal of the Coal Company? A. That practice prevailed for a short time; not universally.

Q. For instance, looking at the minutes of the Railroad Company of March 8th, 1904, don't you find a record there of the execution of an appeal bond by the Coal Company? A. In the minutes of the Executive Committee and Finance Committee of March 8th, 1904,

168 of the Railroad Company, a minute is made of the execution of an appeal bond by the Lehigh Valley Coal Company.

Q. For what amount? A. $2,500.

Q. Please look at the paper which I now hand you, marked **Government Exhibit No. 25**, and state what it is? A. This is a circular letter addressed to the stockholders of the Lehigh Valley Railroad Company by E. B. Thomas, President, dated January 19th, 1912. It refers to the payment of a dividend on February 26th, 1912——

Q. You need not state the substance of it, but it was a circular sent to all of the stockholders of the Lehigh Valley Railroad Company? A. It was. 169

Hearing adjourned until Tuesday, June 23rd, 1914, at 10 o'clock A. M.

New York, June 23, 1914.

Hearing resumed pursuant to adjournment.

APPEARANCES AS BEFORE. 170

David G. Baird, recalled.

DIRECT EXAMINATION CONTINUED BY MR. MACHEN:

Mr. Machen: Having requested from counsel for the defendants certain extracts from minutes of the Lehigh Valley Railroad Company, I now produce and file the following which have been handed to me by counsel for the defendants and which I now mark **Government Exhibit No. 26,** being an extract from the minutes of the meeting of the Board of Directors of the Lehigh Valley Railroad Company held October 13th, 1891; 171

And **Government Exhibit No. 27,** being an extract from the minutes of the meeting of the Board of Directors of the said company held September 12th, 1893. I believe these are admitted to be correct?

Mr. Boles: They are admitted to be correct.

Mr. Machen: I also file the following documents which have been similarly requested of counsel for the defendants and handed to me, namely: 172

An extract from the minutes of the meeting of the Board of Directors of Coxe Brothers & Company, Inc., held June 28th, 1906, which I now file and mark **Government Exhibit No. 28.**

And an extract from the minutes of the Board of Directors of Coxe Brothers & Company, Inc., held April 18th, 1907, which I also file marked

173 **Government Exhibit No. 29.** These also are conceded to be correct?

Mr. Wheaton: Yes. These minutes were produced on call from me as representing Coxe Brothers.

Mr. Machen: But they are admitted to be correc.? If not, I would like to prove them.

Mr. Wheaton: Oh, no, they are admitted. The point I make is you are making this record show that these documents are produced by counsel for the defendants generally which is not correct.

174 Mr. Machen: What I mean is they are admitted to be correct by all counsel.

Mr. Wheaton: No, they don't know anything about that. I admit them to be correct as counsel for Coxe Brothers & Company, Inc.

Mr. Warren: You say you called on counsel for the defendants. You never asked me for any such document.

Mr. Wheaton: You asked me and I produced them and called them accurate.

175 Mr. Machen: Yes, but I want an admission from all counsel or prove that these are correct copies of the minutes.

Mr. Boles: What do you want me to do? Compare them myself?

Mr. Machen: I want you to admit that they are correct. If you have any doubt about that we will have Mr. Baird read them off into the record.

Mr. Warren: I don't want to be put into the position of agreeing to something which has to

176 do with a concern I have nothing to do with and which I was never asked about.

Mr. Machen: Very well, we will have Mr. Baird read them. Are the extracts from the minutes which were filed yesterday marked **Government Exhibits 5 to 21** inclusive admitted to be correct by all counsel?

Mr. Wheaton: Whose minutes are they? I will admit that all of the minutes put into evidence yesterday concerning the Lehigh Valley Coal Com- by all counsel?

Mr. Machen: I am not asking you that question, 177
Judge Wheaton; I am asking you whether these minutes which are filed marked Government Exhibits numbered 5 to 21 inclusive are admitted to be correct. If not, it will be necessary for Mr. Baird to go over them all and compare them.

Mr. Boles: I can solve that question for you right now. Mr. Baird made all of these extracts and he can say right now that they are correct.

Mr. Machen: I will ask Mr. Baird that question then.

178

Q. Did you prepare, Mr. Baird, or compare the papers purporting to be extracts from the minutes of the Board of Directors of the Lehigh Valley Railroad Company which were filed yesterday in evidence, marked **Government Exhibits numbers 10 to 21** inclusive, and if so, are the same correct copies of the minutes, or portions of the minutes of which they purport to be copies? A. The extracts that were furnished were prepared in my office and are correct.

179

Mr. Howland: I think on behalf of the Girard Trust Company I ought to interpose an objection to the competency of these against the Girard Trust Company.

Mr. Machen: Do you mean to object to the mode of proof or simply to raise an objection which would go to the competency of the minutes themselves if read in evidence by the witness?

Mr. Howland: That is it exactly.

Mr. Machen: You haven't any objection to ad- 180
mitting the correctness of the copies, but subject to all objections to which the original minutes are subject?

Mr. Howland: I think that should apply to all minutes to save interruption.

Mr. Machen: There is no objection to that. All that I wanted was an agreement by everyone that the copies are correct.

181 Q. Mr. Baird, did you prepare or compare these extracts from the minutes of the Board of Directors of the Lehigh Valley Railroad Company which have been filed in evidence this morning, marked **Government Exhibit No. 27**? A. They were prepared in my office and are correct. No, I beg your pardon; I don't think they were.

Mr. Machen: Then I will have to put on the gentleman who made these.

Mr. Boles: I will admit them to be correct
182 copies.

Mr. Machen: How do the other counsel feel as to such a case as this? That these extracts may be received in evidence subject to all exceptions to which the original minutes would be subject?

Mr. Wheaton: We have no objection to that at all.

Mr. Boles: Certainly, that is all right.

Mr. Machen: Mr. Brown, will you have a note made that it is agreed that all copies of ex-
183 tracts from the minutes of the Board of Directors of the Lehigh Valley Railroad Company, or Coxe Brothers & Company, Inc., which have been offered in evidence on behalf of the Government may be received in evidence with like effect as the original minutes, subject to any exceptions which the original minutes if duly produced and proved would be subject to?

The Special Examiner: Subject only to such exceptions as to relevancy I suppose?

Mr. Machen: Or to competency, yes.
184

Mr. Wheaton: Subject to all such objections as would be pertinent to the original minutes if duly produced and proved.

The Special Examiner: Is that agreed to?

Mr. Boles: Yes, that is agreed to.

Mr. Wheaton: Yes.

Mr. Machen: Then I suppose we can strike out all that went before. I now produce and file in evidence, marked **Government Exhibit No. 30**, a paper purporting to be a copy of a letter signed

by Mr. E. B. Thomas, President, and addressed 185
to Mr. J. W. Skeele, Vice-president and Director of the Lehigh Valley Coal Company, dated January 11th, 1912.

I also produce and file, marked **Government Exhibit No. 31,** what purports to be a copy of a letter from John W. Skeele, Vice-president, addressed to Mr. E. B. Thomas, President Lehigh Valley Railroad Company, also dated January 11th, 1912.

Mr. Machen: I want to ask also, if it is agree- 186
able, that these papers may be received in evidence without proof or production of the originals.

Mr. Boles: I admit they are correct copies.

Mr. Warren: I notice this letter, **Exhibit No. 30,** speaks of the attached resolution. I don't notice any resolution attached to it.

Mr. Machen: That resolution is already in. Will the same stipulation be noted?

The Special Examiner: The same stipulation is agreeable, gentlemen? 187

Mr. Wheaton: Yes.

Mr. Boles: Yes.

Mr. Machen: And these copies may be received in evidence with like effect as the originals if duly produced and proved, and subject to all the objections to which the originals themselves would have been subject?

Mr. Wheaton: Yes.

Mr. Boles: Yes.

Special Examiner: It is so noted. 188

Q. Mr. Baird, will you please tell me what the notation in the upper right hand corner of these letters means, "L. V. R. R. 8457. Secretary?" A. I don't know. That is too much for me.

Q. Isn't that your method of filing papers in your office? A. It may be. I would have to ask my file clerk; I could not tell.

189 Q. I would be obliged if you would ascertain that and let us know what those letters mean? A. All right, I will get that information, if I can find it.

Q. Will you please look at the statement which I now hand you, marked **Government Exhibit No. 32**, and state whether or not you have verified or caused to be verified under your supervision the statement which it contains? A. This statement was prepared in my office and I believe it to be correct.

Q. Mr. Baird, you are able to recollect any instance in
190 the course of your connection with the Lehigh Valley System in which the Lehigh Valley Railroad Company had purchased or subscribed to funds of any corporation controlled by it other than a coal company; that is to say, a company engaged in mining or selling anthracite coal, in which the bonds bore a lower rate of interest or so low a rate of interest as 4% on the amount paid for them by the Railroad Company? A. It would be impossible for me to answer that question off hand without consulting books, papers, documents and so forth.

191 Mr. Machen: All right; that is all gentlemen.

Cross-Examination by Mr. Boles:

Q. Do you recollect the rate of interest on the Wyoming Valley Water Supply Company bonds, Mr. Baird? A. No, not off hand. The mortgage bonds of the Wyoming Valley Water Supply Company are at the rate of 5%.

Q. Those bonds are guaranteed by the Lehigh Valley Railroad? A. I think not, sir.

Q. The Lehigh Valley Railroad Company owns all the
192 stock? A. The Lehigh Valley Railroad Company owns all the stock.

Q. And there are the properties of how many water companies pledged under that mortgage? A. Twelve or thirteen.

Q. The stock of which is all owned by the Railroad? A. Was originally owned by the Railroad and now subsidiary to the WyomingValley Water Supply Company.

Q. And were some of those companies acquired at the time of the purchase of the Coxe Brothers & Company stock? A. They were.

Q. How many? A. Three or four. 193

Q. When you were secretary of the Lehigh Valley Coal Company during the same period of time, or when you were secretary of the Lehigh Valley Coal Company and at the same time were secretary of the Lehigh Valley Railroad Company, did you keep the books and records of the two companies absolutely apart? A. They were kept absolutely separate and apart.

Q. Just as if two different men were holding the different offices? A. That is correct.

Q. Wherever a transaction took place at the meetings of the Railroad Company which concerned the Coal Company did the Coal Company take the necessary action of its Board of Directors at such times as the By-laws of the Board or as the ordinary business affairs demanded it? A. The modern practice, or the practice which prevailed of recent years was that the Coal Company took action on all matters that came before it whether they originated—whether they were first in the records of the Railroad Company or not. 194

Q. Were you at the same time secretary of some other subsidiary companies of the Lehigh Valley? A. Yes, sir. 195

Q. Such as what? A. Such as the Pennsylvania & New York Canal & Railroad Company, Lehigh Valley Rail Way Company, Lehigh Valley Railroad of New Jersey, Loyalsock Railroad Company, Coxe Brothers & Company, Inc.

Q. How about Water Companies? A. And all of our water companies; I think thirteen in all.

Q. And you kept the minutes of the water companies distinct and apart? A. Absolutely.

Q. Are those water companies doing a public water supply business in Pennsylvania? A. They are. 196

Q. Subject to the water laws of the state? A. Yes.

Q. Subject to the Public Service Commission of the state? A. Yes, sir.

Q. Do they supply water on meters? A. In some localities, yes.

Q. Chartered under the water laws? A. Yes.

Q. All stock of the Lehigh Valley Coal Company and Coxe Brothers & Company is pledged with the Girard Trust Company, isn't it? A. Yes, sir.

197 Q. Do we have voting rights on that stock? A. We do.

Q. Does the physicial possession of the certificates lie with the Girard Trust Company of Philadelphia? A. They do, or it does, whatever is the proper grammatical answer.

Q. Are you familiar with any statutory authority under which the Railroad guaranteed the bonds of the Lehigh Valley Coal Company and the Delano Land Company?

198 Mr. Machen: I object to that question.

Mr. Boles: Let the objection be noted on the record.

A. The endorsement of guarantee on the bonds of the Delano Land Company was by specific legislative authority by the State of Pennsylvania.

Q. Is the same thing true of the Lehigh Valley Coal Company?

199 Mr. Machen: My objection, of course, goes for all of this testimony in reference to the statutes of the State of Pennsylvania.

A. The guarantee of the bonds of the Lehigh Valley Coal Company was made subject to a law of the State of Pennsylvania, the date of which I have forgotten, but it is not so specific as that of the Delano Land Company.

Q. But it is a general authority? A. It is a general authority.

Q. What relation was there between the Cross Creek
200 Coal Company and Coxe Brothers & Company, in a corporate capacity I mean—what corporate relation? A. You are speaking now of the present Coxe Brothers & Company, Inc.?

Q. Yes? A. The Cross Creek Coal Company was a predecessor company.

Q. Did you testify yesterday that some of the Beaver Meadow Lands were under lease for some time to the Cross Creek Coal Company? A. I did.

Q. And that was prior to our purchase of the stock of the Coxe Brothers & Company, Inc.? A. It was.

Q. Do you know what portion of the Beaver Meadow Land was under such lease or leases? A. No, I do not know; no, sir. 201

Q. And were they operated under the leases? A. They were.

Q. By the Cross Creek Coal Company? A. By the Cross Creek Coal Company.

Q. Were you at any time secretary of the Beaver Meadow Railroad? A. No, sir.

Q. Were you at one time secretary of the Hazleton Coal Company? A. Yes. One moment. I would like to verify that. 202

Q. Did you ever hold an official position in the original Hazleton Company? A. No, sir.

Q. Are you familiar from the corporate records that that company had authority to transport coal as well as mine it? A. Yes.

Mr. Machen: We object to that question and answer.

Q. Have you ever seen the corporate charter of the Hazleton Coal Company, the original Hazleton Coal Company? A. I have seen the pamphlet laws of the State of Pennsylvania which contains the charter right. 203

Q. Have you read it? A. I have.

Q. And does it contain powers to act as a common carrier? A. It does.

Mr. Machen: Note an objection of this testimony.

Q. Does it contain power to mine coal and—— A. It does. 204

Mr. Machen: I don't want to always be objecting, but it is understood that I object to all questions as to the charter powers or legal authority of these corporations, or any of them.

Have you read the charter of the Beaver Meadow Railroad Company? A. I have read a pamphlet copy of the act of the Legislature of the State of Pennsyl-

vania which charters the Beaver Meadow Railroad & Coal Company.

Q. And does it give the company authority to act as common carrier? A. Yes.

Q. And does it give authority to mine coal? A. It does, yes.

Q. And own coal lands? A. It does.

Q. Were those companies subsequently merged into the Lehigh Valley Railroad Company? A. They were.

CROSS-EXAMINATION by Mr. Warren:

Q. Just a few words, Mr. Baird. Calling your attention to **Government Exhibit No. 22**, which you identified yesterday as being a list of the Officers and Directors of the Lehigh Valley Railroad Company, I want to ask you if G. N. Wilson was ever a Director of the Lehigh Valley Railroad Company? A. No, sir.

Q. Was John W. Skeele ever a Director of the Lehigh Valley Railroad Company? A. No, sir.

Q. Was William J. Burton ever a Director of the Lehigh Valley Railroad Company? A. No, sir.

Q. Was A. R. Kyle ever a Director of the Lehigh Valley Railroad Company? A. No, sir.

Q. Was Paul Moore ever a Director of the Lehigh Valley Railroad Company? A. No, sir.

Q. Was Thomas W. Lamont ever a Director of the Lehigh Valley Railroad Company? A. No, sir.

Q. Was William R. Evans ever a Director of the Lehigh Valley Railroad Company? A. No, sir.

Q. Was Francis L. Hine ever a Director of the Lehigh Valley Railroad Company? A. No, sir.

Q. Was Horatio G. Lloyd? A. No, sir.

Q. Was Lyman D. Smith? A. No, sir.

Q. Is that the fifty-eighth annual report of the Directors of the Lehigh Valley Railroad Company issued to the stockholders for the fiscal year ending June 30th, 1912? A. Yes, sir.

Mr. Machen: Do you want to offer this as an exhibit?

Mr. Warren: No, I want to ask him to read an extract from it.

The Witness: It is a printed copy of it.

Q. It says "To the stockholders"; do you know whether this report and the others to which counsel for the Government called your attention are sent to the stockholders? A. They are. 209

Q. I call your attention to page 13 of this report under the head "Financial" and the third paragraph of that report; will you be kind enough to read that? A. (Reading.):

"In January The Lehigh Valley Coal Company, which has, since its incorporation, been engaged in the mining, shipping and selling of anthracite coal, caused to be organized a new company with the name Lehigh Valley Coal Sales Company, for the purpose of purchasing at the mines and shipping and selling all coal which it mined and purchased. The new company was created with an authorized capital stock of $10,000,000, of which $6,060,800, or 121,216 shares, with a par value of $50 each, were immediately issued and the balance reserved for future needs. The privilege was accorded stockholders of the Lehigh Valley Railroad Company of subscribing to stock of the Sales Company for an amount equivalent to ten per cent. of their holdings. The Sales Company formally commenced business March 1, 1912. Neither the Lehigh Valley Railroad Company nor The Lehigh Valley Coal Company has any ownership in the stock of the Sales Company or any interest, direct or indirect, in the coal transported." 210 211

Q. Counsel for the Government offered in evidence an extract from the minutes of the Lehigh Valley Railroad Company and which he asked you to read, having to do with a certain increase of the capital stock of the Lehigh Valley Railroad Company about the latter part of June, 1910, and in the minutes, which as I remember it were read, there was a statement as to the issuance of fractional share receipts. I want to ask you if this paper which I hand you is not a printed copy of the circular which you issued as secretary of the Lehigh Valley Railroad Company in connection with and fol- 212

213 lowing the corporate action of the Lehigh Valley Railroad with reference to that increase of stock? A. It is.

Mr. Warren: I would like to have this identified so that it may be offered by the Lehigh Valley Coal Sales Company at the proper time. I ask now that it be identified as Lehigh Valley Coal Sales Company Exhibit.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 1** for identification.

214 Q. I call your attention now to **Government Exhibit No. 25** offered yesterday, which is what you then stated a printed notice to the stockholders of the Lehigh Valley Railroad Company signed by E. B. Thomas as President of the Railroad Company and dated January 19th, 1912. I think you said you were familiar with that notice of the stockholders? A. I am.

Q. Will you tell us, if you know, the purpose of the provisions both in the carrying out of the resolution as to the increase of stock in 1910 and the privilege accorded the stockholders as appears in the circular of
215 January 19th, 1912, in the matter of the allotment of stock, or warrants of stock, one circular referring to the issuance of warrants and the other the allotments of stock? A. I am familar with the provisions set forth in those circulars; in one case, that of 1910, the stock was allotted to the stockholder. He had the privilege of subscribing so much stock, no more nor less; in the case of 1912 a dividend was payable to each stockholder in accordance with the number of shares he held, neither more nor
216 less. In addition to that he was given the privilege of subscribing to stock of a new company, the provision being that he might use his dividend to pay for such subscription.

Q. Will you state whether it is unusual or exceptional for a notice of the character of that of January 19, 1912, in the matter of dividends to require that the stockholders who might desire to avail themselves of the privilege of subscribing for stock in the Sales Company are to subscribe for the whole of their allotment?

Mr. Machen: Objected to.

Q. Go on? A. It is not unusual. In fact I know in 217
my personal experience of no other practice, and where a stock is alloted they must take all or none, and the burden of the circular of 1912 is of the same intent. It could be hardly otherwise from a good accounting standpoint.

Q. Will you tell us whether endless confusion would not arise if you undertake to split up fractional shares in the matter of a privilege accorded a person receiving a dividend to subscribe for the portion of a stock issue?

218

Mr. Machen: Objected to.

A. In the case of the 1912 circular endless confusion would have been the result had anything been done other than that which the circular points out.

Q. What, if anything, had the railroad to do with the subscriptions to the stock? A. Nothing whatever.

Q. Of the Sales Company? A. Nothing whatever.

Q. Isn't it a fact that the only way that the railroad company would have any knowledge of its stockholders who had been granted this 10% dividend availing 219
themselves of the opportunity to subscribe to the stock of the Lehigh Valley Coal Sales Company, would be after the dividend payment and only then as to the determining of what was to be paid in cash at the treasury of the Railroad Company to those who saw fit not to subscribe for the stock; in other words, who want to take their dividends in cash? A. If I might explain—I think I can do so briefly and will give the proper answer. Under the provisions in this circular the stockholders constituted a banking firm in Philadelphia, 220
Drexel & Company, their attorneys to act for them in subscribing, the power of attorney conveying the—or permitting—Drexel & Company to collect their dividends in money for the purpose of making subscription. At a proper time Drexel & Company notified the Railroad Company that so many stockholders had authorized them to collect their dividends. What was left after that was paid by the Railroad Company. In other words, those who did not subscribe through Drexel &

221 Company were paid by the Treasurer of the Railroad Company in a check direct.

Q. And as a matter of fact you would not know whether those who had made Drexel & Company their agents in the matter of accepting the dividend utilized the cash which you paid to Drexel & Company for the purpose of subscribing to Sales Company stock or for another purpose? A. No.

Q. Now, wasn't this in accord with the practice of other railroad companies with which you are familiar with reference to increases of capital and matters analogous to this same arrangement that is embraced in the circular of January 19th, 1912? A. It is the common practice so far as my knowledge goes.

222

Q. Would you not say that it was invariable practice within your knowledge to issue warrants to stockholders covering the entire amount for which they were entitled to subscribe, and do you know of any case where a stockholder was permitted to subscribe for anything less than the amount called for in his warrant. I am speaking of a case where you are giving an opportunity to the stockholders to subscribe for a proposed increase in capital stock of your company such as was done in 1910 for instance? A. It is the invariable practice of the Lehigh Valley Railroad Company certainly, and of other companies so far as my knowledge goes, in every case to issue a warrant which is a notice to the stockholder that he is entitled to subscribe for so much of the stock. That warrant states the amount to which he is entitled to subscribe and no more and no less.

223

Q. Are you not familiar with the increases, or some of them, of the capital stock of the Pennsylvania Railroad in past years? A. In a general way.

224

Q. Is it not your understanding that the practice they followed in the matter of allotments of stock was similar to that which you followed?

Mr. Machen: Objected to.

A. I have been told that in every case where the stock issue was made.

Mr. Machen: Objected to again.

Q. Go ahead with your answer? A. That a warrant 225
was an essential and was first issued.

Q. Which, of course, meant that the stockholder could take no more and no less than his warrant called for? A. That is my understanding.

Q. So that there was nothing unusual or exceptional or out of the normal business course generally in the notice to stockholders in January, 1912, issued by Mr. Thomas, President of the Lehigh Valley Railroad Company so far as you know at any rate? A. If it had any other provision it would have been unusual.

Q. Counsel asked you about the divisions of the anthracite region, which he called trade divisions; now let us see if this is not right, is not within the facts: that the anthracite region geographically speaking is divided between the Wyoming field and Lehigh field or region sometimes called, and the Schuylkill region or field? A. That is what I intended to convey in my answer yesterday. Geographical divisions. I know nothing of trade divisions. 226

Mr. Machen: You mean you have no knowledge whether there are any trade divisions or not? 227

The Witness: I have no knowledge as to whether there are any trade divisions.

Q. In other words, you have no knowledge of such trade names as are utilized in trading in anthracite coal associated with localities? A. None whatever.

Q. What you were speaking of was really that which is understood generally in Pennsylvania as descriptive of the anthracite region in its entirety? A. Yes.

Q. That is, its sub-division? A. Yes. 228

RE-DIRECT EXAMINATION by Mr. Machen:

Q. Mr. Baird, how many times since you have been connected with the Lehigh Valley Railroad Company has that corporation increased its capital stock and offered the new shares to the old stockholders for subscription? A. Offhand, three or four times.

Q. Have you never known of a case in which a stockholder subscribed to part of his allotment and assigned

229 his right to subscribe to another portion? A. Oh, yes; that is to say, after he got his warrant he could assign part of it and bring the warrant back and we would split it for him; but the warrant called for the original amount to which he was entitled, no more and no less.

Q. The warrant was assignable and could be assigned in fractions just as a certificate for 100 shares could be assigned? A. It could not be assigned for a fraction of a share.

Q. Not for a fraction of a share, but a right to sub-
230 scribe to 100 shares could be assigned as 50 shares to one person and 25 to another and 25 to another? A. I am not able to say as to every case, but I will say that in some of our stock issues the privilege of spliting warrants was accorded the stockholder.

Q. Have you ever known of a case in your experience, except the case of the Lehigh Valley Coal Sales Company in which—I mean now in your personal experience—in which the stockholders of one company were accorded the right by virtue of such stockholding to subscribe to the shares of stock of another corpora-
231 tion? A. No.

Q. Wouldn't it have been perfectly feasible for the Lehigh Valley Railroad Company to declare a cash dividend payable to all of its stockholders in cash and for another corporation, the Coal Sales Company if you will, to accord simultaneously to those stockholders a perferential right to subscribe to its shares of stock? A. That is what was done in the case of the Sales Company I believe.

Q. Would it in such case have caused any confusion
232 if the dividend checks were sent out by the Railroad Company payable to its stockholders unconditionally, and for the other company—and we will call it for the sake of argument the Coal Sales Company, for the sake of illustration the Coal Sales Company—the right to subscribe to any number of shares up to a point not exceeding a certain quota measured by the number of shares they held in the Railroad Company? A. In our circular as set forth the Railroad stockholders were accorded the privilege of subscribing to the Sales Company stock in the amount of their dividends.

Q. They were required to subscribe to the whole or none? A. They were. 233

Q. But it would have caused no possible confusion if the Railroad Company had declared a dividend of 10%, or whatever the amount was, and the Coal Sales Company had simultaneously offered to the Railroad stockholders the right to subscribe perferentially to a certain number of its shares measured not to exceed a certain proportion of the number of shares held by each subscriber in the Railroad Company? A. That was what was done, and there was no confusion.

Q. But the point is that there would have been no confusion created whatever by permitting the stockholder of the Coal Sales Company to subscribe to any number of shares up to the amount of his quota, but without requiring him to subscribe to the whole of his quota or—— A. It would have resulted in endless confusion. 234

Q. How? A. From an accounting standpoint and based also upon the time limit required in which the Sales Company was to set up its business.

Q. Why? A. I merely said it would, from an accounting standpoint. 235

Q. Yes, but I am asking you to explain; I am so dense that I cannot understand why there should be any confusion? A. Well, I am stating that there would have been confusion about the thing because there would never have been any end to it.

Q. Why? A. Because, you take a list of six or seven or eight thousand stockholders like the Lehigh Valley Railroad, scattered all over the world, you have to have something definite and had to have a definite time for them to come in. 236

Q. No doubt about that; at least, we will assume that? A. And you had to make a time limit and you had to know what they were going to do within that time limit.

Q. Again I say it, how does that create any confusion? A. It did not create any confusion.

Q. Why would that have created any more confusion if the stockholders in the Railroad Company had been allowed to subscribe for one half of his allotment with-

237 out subscribing the balance? A. The Coal Sales Company would have had no knowledge as to how to handle the thing at all. They would not have known how much stock to have issued, the Railroad Company would not have known how much dividend the stockholder was to be paid—it takes about a week or ten days to write up those dividend checks.

Q. Yes, but the dividends could have been a quite independent transaction; the Railroad Company could have paid its dividend. I won't argue the question any
238 more——

Mr. Warren: It is merely argumentative, I think, all that enquiry.

Mr. Machen: He started it.

Q. Did you ever know of a case in your experience in which a stockholder offered to subscribe to a portion of his quota of new shares and in which his subscription was refused, on the ground that he could not subscribe to less than the whole of his quota? A. I cannot point
239 out an identical case, but I have known of such cases. I speak now in a general way, where people come up and want less, and I have known them to say they wanted more.

Q. Naturally they could not get more? A. No, I presume not.

Q. I want you to look at the annual report of 1912, from which you read paragraphs on page 13, the annual report of the Lehigh Valley Railroad Company, and I will ask you to be good enough to read the two succeeding paragraphs, the two paragraphs following the
240 one which you read? A. (Reading):

"The certificates of indebtedness of The Lehigh Valley Coal Company, amounting to $10,537,000, issued by that Company to the Lehigh Valley Railroad Company some years ago to represent its indebtedness for advances made to it for capital expenditures, were redeemed on March 1st. The Lehigh Valley Coal Company paid off $3,037,000 of the same in cash at par and, in exchange for

the balance, issued $7,500,000 Fifty-Year Gold De- 241
benture Obligations, bearing interest at the rate of four per cent. per annum, payable semi-annually on the first days of March and September. These debentures were deposited with the Trustee of the General Consolidated Mortgage, the certificates of indebtedness having been so held. The Lehigh Valley Coal Company further paid all arrearages of interest on the certificates of indebtedness up to March 1, 1912. The amount applying prior to the present fiscal year was credited to Profit and Loss
and the balance, $280,986.67, was included in the 242
Income of the present year. In addition, the Income Account of the Lehigh Valley Railroad Company is being credited with interest on the $7,500,000 Debentures as the same accrues and is paid by the Coal Company.

"Various subsidiary companies owned by the Lehigh Valley Railroad Company, to which cash advances were made during the year for expenditures to cover additions and betterments to their respective properties, have reimbursed your Com- 243
pany by the issuance of Five Per Cent. Debenture Bonds, as follows: The Lehigh Valley Railway Company, $324,000; Pennsylvania and New York Canal and Railroad Company, $203,500; Lehigh Valley Transportation Company, $67,000; Lehigh Valley Railroad Company of New Jersey, $61,500; National Storage Company, $60,000; The Schuylkill and Lehigh Valley Railroad Company, $6,000; Montrose Railroad Company, $5,500, and Loyalsock Railroad Company, $4,500. In addition, $59,- 244
000 Five Per Cent. Bonds have been received from the Wyoming Valley Water Supply Company to cover amounts advanced to that Company for capital purposes during the year. All these several securities have either been placed in the treasury or deposited under the General Consolidated Mortgage, as required thereby."

Q. Are you a lawyer A. I am not.
Q. Have you ever studied law? A. Never.

245 Q. Are you familiar in any way with the legal experience of statutory construction or constitutional law? A. That is a pretty broad question; I don't know what you mean by that.

Q. I mean have you ever studied the judicial decisions on questions of constitutional law and statutory construction? A. I have read a good deal of such books, but I am not a lawyer.

Q. Are you familiar with the Constitution of Pennsylvania? A. I have read it.

246 Q. Referring to these Water Supply Companies which you mentioned, let me ask you this: do these water supply companies furnish any service in connection with the operation of anthracite coal mines? A. I believe they do.

Q. Do you know whether or not any of these companies pay dividends on their stock? A. One of those companies has paid a dividend.

Q. And only one? A. Only one from my knowledge. Necessarily only one because they are all consolidated by lease or merger to one company.

247 Q. They are now only one, but they used to be a good many? A. They are all separate and distinct companies and they have a corporate existence and they go through the necessary corporate acts, but their property is leased to one operating company.

Q. Is that company declaring any dividend now A. It declared a dividend last year.

Q. Is that the only dividend it has ever declared? A. I cannot answer offhand.

248 Mr. Boles: It was only organized one year, two or three.

Q. Did any of the lessor corporations ever declare a dividend? A. Not to my knowledge.

Q. Would you have been likely to know if they had? A. Yes, I think I would. I cannot at this time recall that any of them paid any dividends. It is unlikely that they would have paid any dividend, because all of their construction has been of very recent years and is still going on.

Q. Are you sufficiently familiar with the process of 249
anthracite coal mining to describe to me the use, the method in which these Water Supply Companies furnish assistance in the process; what use the water they furnish is in anthracite mining? A. Why, they evaporate the water and make steam; it is used for power.

Q. Is that the only thing they use it for? A. So far as I know that is the only use they make of it, is for steam purposes.

Q. For washing coal? A. I doubt very much whether they use that commodity, a potable water, for washing 250
coal, although I am not familiar with all the details of it.

Q. When you were secretary of the Lehigh Valley Coal Company and also of the Lehigh Valley Railroad Company you had kept the minutes of each company in a separate book I think you said? A. Yes, sir.

Q. Were these books kept in separate vaults? A. Well, I cannot recall now whether they were or not; likely not.

Q. They were kept in the room in the office building belonging to the Lehigh Valley Railroad Company at 228 251
South 3rd Street, Philadelphia, were they not? A. They were, at which the Lehigh Valley Coal Company and other corporations had their principal office.

Q. But you testified on direct examination that you don't know whether the Lehigh Valley Coal Company paid any rent for its office? A. I did so testify, because I don't know.

Q. Are these $7,500,000 of fifty years gold debenture obligations of the Coal Company, bearing interest at 4% per annum, still held by the Railroad Company? A. 252
They are owned by the Railroad Company, but are pledged with the Trustee of the General Consolidated Mortgage.

Q. None of them have been disposed of to the general public? A. They have not.

253 **George Miller**, called on behalf of the Petitioner, being first sworn, testified as follows:

Direct Examination by Mr. Machen:

Q. Please state your residence and occupation? A. Residence Philadelphia; clerk of the Traffic Accounting department.

Q. Of what company or companies? A. Lehigh Valley Railroad.

Q. Have you examined the paper which I now hand you, marked **Government Exhibit No. 33**, and if so,
254 please state whether or not the facts stated therein are correct according to the records of the Lehigh Valley Railroad? A. They are in accordance with the records of the Lehigh Valley Railroad Company.

Q. How long have you held this position with the Lehigh Valley Railroad A. Since August, 1900.

Q. Was it or not formerly the practice of the Lehigh Valley Railroad to publish in its annual report each year a statement showing the percentage of tonnage carried by the Railroad which was furnished by the Lehigh Val-
255 ley Coal Company or which was mined by the Lehigh Valley Coal Company or purchased under sales' contracts? A. I believe it was. The bottom part of the statement shows some figures taken from the annual report.

Q. This practice was discontinued then after the report for the year ending June 30th, 1908, was it? A. I couldn't say as to that. I could not say whether the annual reports after 1908 contained figures or not.

Q. Won't you examine that then and you will be able
256 readily to verify that I imagine. (Handing witness annual reports). A. The report of 1909 contains the figures 83.2 per cent, page 7; the report of 1910 does not.

Q. Or any of the subsequent dates? A. Or any of the subsequent dates.

Q. But the company still keeps records for its own purpose giving the same information? A. Yes.

Q. Are you required each year to furnish this information to any superior officer or to the Board of Di-

rectors? A. I don't know as I can say offhand, but I 257
am rather positive that it has not been furnished since the year 1910 until this statement was prepared.

Q. According to this statement 82.9 percent of the total number of tons of anthracite coal transported by the Lehigh Valley Railroad Company consisted of coal mined by the Lehigh Valley Coal Company or purchased by the Lehigh Valley Coal Sales Company prior to the time of transportation, is that correct? A. That is correct.

Q. I notice that this paper, Government Exhibit No. 258
33, speaks of the tonnage merely, without saying tonnage of what; is that tonnage of anthracite coal exclusively? A. Exclusively, yes, sir.

Q. It does not include any bituminous coal? A. None whatever.

Q. Are the tons in this statement gross tons or net tons? A. 2,240 pounds, gross.

Q. What do you mean by the statement the percentages are based on the total output of the collieries? A. The total production of the collieries as shipped over 259
the Lehigh Valley Railroad was taken to obtain the percentages shown on that table.

Q. Does this 82 percent include the coal of the G. B. Markle Company? A. It does.

Mr. Machen: At the request of the counsel for the Lehigh Valley Coal Sales Company, I state that the **Government Exhibits No. 32 and No. 33** were addressed and sent to Mr. Frederick R. Coudert, then special assistant to the Attorney General in the early part of February, 1914.

Mr. Warren: Counsel for the Lehigh Valley 260
Coal Sales Company ask that it be noted on record that he was out of the room at the time Government's counsel offered exhibit No. 32 and he reserves the right to verify the correctness of the figures contained in this paper, and to object to its admissibility if upon such investigation he finds that it is not accurate in its details.

Q. Please look at the report of the Lehigh Valley Railroad Company for the year 1894, and read the

261 paragraph at the top of page 21 in reference to the coal of G. B. Markle & Company? A. "Included in the foregoing is the coal from collieries of G. B. Markle & Company, which will in the future be omitted from the statement, as during the year the company has parted with its interest in the firm, retaining, however, the sale and transportation of the coal during the life of the leases, as heretofore."

Q. When did you stop excluding the Markle coal from this statement? A. It was prior to this enquiry. I
262 don't know anything about that; I don't know anything about anything of that kind in 1894.

Q. This table of percentages does not include, does it, coal which was shipped from tenants of the Lehigh Valley Railroad Company or of the New York & Middle Coal Fields Railroad & Coal Company, who were bound by the covenants in their leases, or would have been bound if such covenants were valid, to ship exclusively over the Lehigh Valley Railroad? A. I could not answer that question from the name of the corporate concern. I can answer the question in stating that the
263 tonnage included in those percentages is based upon shipments made from all collieries located on the Lehigh Valley Railroad from which the Coal Sales Company, the Coal Company shipped or purchased coal.

Q. And you treat the coal of the G. B. Markle Company as coal purchased? A. As purchased coal, yes.

Q. How do you treat the coal mined by tenants of the Lehigh Valley Coal Company who do not sell to the Coal Company or to this Coal Sales Company? A. As individual shippers.

264 Q. That would not be included then in this table of percentages? A. No, sir. If the Coal Sales Company took none of the output.

Q. And if they did take any of it it would include only so much as they actually took? A. No, that is based on the total production of the colliery.

Q. Do you mean to say that if the Coal Company purchased one ton of coal from the colliery the total production of that colliery is included in the 82 per cent, or whatever it may be? A. Not necessarily. If the Coal

Sales Company have been taking the output of that 265
breaker, the total production is put in.

Q. That is, if they have been buying the entire production? A. Buying the entire production; although there may be individual shipments made from that colliery to other parties.

Q. Can you verify from the annual reports of the Railroad Company or otherwise the table of percentages found on page 60 of the petition for the years prior to the year 1903? A. The figures in this book compare with the statement on here, from 1906 up to 1913. 266

Q. You can get the statements of those earlier years, can't you, from the reports? A. I can take the figures you have on the reports with these figures here.

Q. Try it for a moment and see if you cannot do it; take 1902 for instance.

By Mr. Warren:

Q. Mr. Miller, may I ask you to look at the paper counsel for the Government handed you, taken from the Interstate Commerce Commission Library, and a printed report apparently for the year 1894, by the 267
Board of Directors of the Lehigh Valley Railroad Company; he asked you to read the paragraph at the top of page 21; do you remember it? A. Yes, sir.

Q. Do you not find on the bottom of the previous page that that is associated with a table summarized from the report of W. A. Lathrop, General Superintendent of tonnage, as this page reads, from collieries as compared with two preceding years; do you not find that? A. Yes, sir, I do.

Q. And at that time wasn't Mr. W. A. Lathrop the 268
General Superintendent of the Lehigh Valley Coal Company? A. To the best of my knowledge he was.

Q. Calling your attention to page 4 of this same printed report, look at this list and see if you do not find Mr. W. A. Lathrop is there listed as the General Superintendent in the list of the officers of the Lehigh Valley Coal Company? A. He is so listed.

Recess taken until two o'clock P. M.

269 AFTER RECESS.

George Miller, recalled.

Direct Examination continued by Mr. Gordon:

Q. Mr. Miller, have you at my request compiled from data given in the annual reports of the Lehigh Valley Railroad Company the percentages of the total amount of anthracite coal transported by the Lehigh Valley Railroad Company which was shipped by the Lehigh Valley Coal Company and its affiliated companies in
270 the years 1880, 1885, 1890 and 1895? A. I have.

Q. Will you state on the record the percentages which you have obtained from this data? A. 1880, 26.52; 1885, 21.73; 1890, 18.02; 1895, 60.88.

Q. Those are the percentages——

Mr. Boles: 1902 is right?

The Witness: I don't know. I could not find the data. I made some computations on that, but I cannot say they are right, only so far as the computations I have made.

271 Mr. Boles: 1906 on is all right?

The Witness: 1906 on is all right, yes, sir.

Q. Those percentages which you have just given are the percentages of the total amount of anthracite coal transported by the Lehigh Valley Railroad Company during the fiscal years named which were furnished by the Lehigh Valley Coal Company and the affiliated coal companies as shown in the annual reports? A. Yes, sir, as shown in the annual reports.

272 Q. Does the annual report of the Lehigh Valley Railroad Company for the year 1895 show what amount of coal was produced by the Lehigh Valley Coal Company and what amount was purchased? A. It does.

Q. Will you read the statement? A. Amount produced from mines owned or controlled by it was 2,717,005; purchased from individual operators 3,217,912.

Q. That is gross tons, is it not? A. I presume so; I could not state.

Q. It was the custom at that time? A. It was the 273
custom at that time.

Q. To speak in gross tons? A. Yes.

By Mr. Machen:

Q. By individual operators it meant not merely individuals, but independent corporations? A. Independent operators, yes.

Q. Any corporation not controlled by the Lehigh Valley Railroad Company, either directly or indirectly? A. I presume so, sir.

274

Cross-Examination by Mr. Boles:

Q. Mr. Miller, does the figure for 1906 include coal purchased by the Coal Company—the figure for 1906 on Exhibit No. 33 and also page 60 of the petition? A. Yes.

Q. That includes purchased coal? A. Yes.

Q. Now, the figure for 1895 you say does not include purchased coal? A. I am unable to determine that, as to whether it does or not; there is nothing shown in the annual report that would specifically designate that fact. 275

Q. In your answer to Mr. Gordon—— A. Oh, I beg your pardon; '95 to '96, yes.

Q. '95 to '96 anyway? A. Yes, it specifically shows in 1895.

Q. Does it for 1890? A. It does not.

Q. It does not? A. No, sir.

Q. I show you the annual report of the Lehigh Valley Railroad Company for 1890 and I will ask you to state for the record what that report shows as to the amount of coal purchased by the Lehigh Valley Coal 276
Company and the amount shipped by the tenants of the company? A. I am unable to answer that question.

Q. Here it is? A. The amount shipped by the Coal Company is 1,464,509.

Q. And what does the report show as to the amount shipped by tenants? A. 2,499,562.

Q. Or nearly twice the amount shipped by the Coal Company? A. Nearly double, yes.

277 Q. So that would have the effect of increasing that percentage from 18 to about 60, wouldn't it, or 55? A. Well, doesn't that represent the amount of coal mined rather than shipped?

Q. I don't know? A. I don't know either.

Q. I am asking you? A. I don't know; I don't know about that.

Q. What I want to get at is as to why is the big difference between 1890 and 1895; that must be it? A. (No answer).

278 Q. In that connection will you read what the annual report of 1890 shows at the bottom of page 11 and down to the middle of page 12; I think that will solve this question? A. (Reading):

"It will be noticed by a comparison of the above statement that the tonnage shipped by the Lehigh Valley Coal Co. has decreased at the rate of nearly 100,000 tons yearly since 1888 from the collieries operated by it notwithstanding the fact that two new ones in the Wyoming region,
279 namely, Heidelberg No. 2 and Franklin have been added during that time to the number operated by the company. One enterprise has been purchased. Two others, Maltby and Mineral Spring, which have been idle since 1885, have been put into producing condition and at Rendham the producing capacity of every one of them has been materially increased."

Q. Read the other paragraph? A. (Reading):

280 "On the other hand it will be noticed that the coal shipped by our tenants has been steadily increasing during the stated period in greater ratio than ours has increased."

Q. If that statement is correct in the annual report—that explanation is correct—then these figures represen' tonnage shipped, don't they? A. They represent ton age shipped.

Q. And on that basis the percentage there would be increased about 200 percent, wouldn't it, the percentage for that year? A. That would be about it. 281

Q. Will you explain the difference or the reasons for the difference between the figure 52.67 percent in 1902—or one of the reasons—I understand you cannot check that figure accurately—but assuming that it is approximately correct, one of the reasons for the difference between that figure and the large figure of 85.25 for 1906? A. I would assume that that figure does not include the purchased coal, while the figure of 1906 does.

Q. Now, as to the purchased coal, what percent of the total percentage you show here would be represented by the purchased coal, we will say from G. B. Markle & Company? A. Well, I would say about 8%. 282

Q. And do you get statements every day of the production of the different collieries that ship over the Lehigh Valley Road? A. Our records are made up on the basis of the waybill the coal which passes a certain given point every day.

Q. That is what they call—— A. The regular revenue waybill. 283

Q. And you get tissue copies of these every day? A. We get the carbon copy or duplicate waybill every day and make up our carrying tonnage from them.

Q. And that shows the name of the producer and the amount of tons that he dropped into the cars that day? A. It does.

Q. And from that you can tell how much of this coal is represented by the coal of Markle & Company? A. By colliery production.

Q. And the same way with any other producers not affiliated by a stock ownership of the Lehigh Valley? A. Yes. 284

Q. And what percentage would those other producers represent approximately? A. Approximately about 10% I would say.

Mr. Machen: Do you know or are you just guessing?

The Witness: I am merely going on a certain memory of the figures that we compiled in making

285 these statements. Of course, my memory does not serve me accurately on that. I would not say those are accurately correct but we can verify it and give Mr. Boles the figures.

Q. Have you had occasion to calculate the actual percentage from time to time? A. We calculate those every year.

Q. And you have done it yourself? A. Yes, sir.

Q. And on the basis of that recollection you make
286 your answer now? A. Yes, sir.

Q. And therefore, we will say, the year 1906, the figure of 85.25 contains possibly, to the best of your recollection, about 10%, which would represent the output of the independent producers? A. Yes.

Q. And probably 8 or 9 percent for Markle & Company? A. Yes.

Q. And that would obtain down to the end of the year 1911? A. Yes.

Q. Now, for the year 1912, what percentage would be represented by the tonnage shipped for the Lehigh Val-
287 ley Coal Sales Company? A. I should say about 75%; that is, including the purchased coal, purchased coal of Markle.

Q. You have no way of telling what coal they purchased? A. We have not.

Q. You have no way of telling whether they purchased from the Coal Company or Coxe Brothers or any other producer? A. No, sir, except the statement of shipments as to the accounts upon whom they are made.

Q. Then 75 percent of the 82% would be the Sales
288 Company and 25% of the 82% would be—would be the producers who do not sell the Sales Company? A. No.

Q. What would that be? A. I would say the comparison there that I made is between the supply of coal and the revenue tonnage.

Q. You are right about that, because the independent producers would be represented the difference between 82.65 and 100 percent? A. Yes.

Q. And would the same answer obtain for the year 1913? A. Yes.

By Mr. Machen:

289 Q. Do you mean that the 85 percent or 82 percent in 1913, is 82 percent of the total carried by the Railroad Company exclusive of company supply coal? A. No, sir, including company supply coal.

Q. Then the supply coal is included in the percentage here attributed to the controlled companies? A. Yes.

By Mr. Boles:

Q. I think you said that was true of every year from 1906 down? A. Yes, supply coal is included in the col-
290 lieries production.

By Mr. Machen:

Q. It was not included prior to 1906? A. Yes, in obtaining these averages the supply coal is in the average as far as it is shown.

Cross-Examination by Mr. Warren:

Q. Mr. Miller, after March 1st, 1912, the Lehigh Valley Coal Company was not a shipper of anthracite over
291 the lines of the Lehigh Valley Railroad Company, was it? A. No, sir.

Q. And therefore, the figures appearing in the Government's petition, page 60, of the years 1912, and 1913, in as much as I understand you to say they correctly state the total tonnage of anthracite coal transported by it include in the coal transported by it the property of the Lehigh Valley Coal Sales Company? A. It included the property of the Lehigh Valley Coal Sales Company.

Q. Now, the figures for those two years represent the
292 total tonnage of anthracite transported by the Lehigh Valley Railroad Company or, rather, the proportion of the total tonnage of anthracite transported by it that was either the property of the Lehigh Valley Coal Sales Company or of G. B. Markle & Company, is that right? A. Yes, sir.

Q. You don't know the sources of the production or purchases by the Lehigh Valley Coal Sales Company, the coal which was transported over your line, you don't know where they got the coal, that is what I mean? A. No, sir.

293 Q. Now you are familiar to some extent I take it with the persons who were shippers for the years 1912, and 1913, of anthracite coal over the Lehigh Valley Railroad? A. Yes.

Q. Take for illustration the Kingston Coal Company, which you know is a large shipper over the line of the Lehigh Valley Railroad, do you not, during those two years? A. Yes, sir.

Q. And Elliot McClure & Company were shippers of coal over your line during the years 1912 and 1913? A. Yes, sir.

294 Q. Their operations being at Rendham? A. Yes.

Q. And the Kingston Coal Company operations being at Kingston, Luzerne County? A. Yes.

Q. Do you know whether during the years 1912 and 1913, there were any shipments of coal over your road by the Wilkes-Barre Anthracite Coal Company? A. I think there were, but I could not say positively as to individual shippers.

Q. You will not undertake now, of course, from memory to give us a list of shippers over the lines of the Le-
295 high Valley Railroad of anthracite coal that are so-called independent shippers; that is to say, operators there, whether holding their properties in corporate form or by way of partnership holdings or as individuals, you would not undertake to do that? A. I would not undertake to do that, no, sir.

Q. Do you include in this 82 percent—82.65—for the year 1912, the shipments upon your railroad in all directions? A. Yes.

Q. Do you include in the shipments the intra-state
296 shipments; that is, the shipments in Pennsylvania? A. Yes.

Q. Do you include shipments where you connect with other carriers at points like Allentown or Bethlehem or South Bethlehem and Easton? A. Yes, sir.

Q. And shipments west with connecting carriers at various points in Pennsylvania? A. Yes, sir.

Q. And shipments west on the Lehigh Valley Railroad on its own line to Buffalo for transshipment at the Lake or other means of transportation? A. Yes.

Q. So that there is no division here either as between 297
intra-state or inter-state shipments or points of destination? A. None whatever.

Re-Direct Examination by Mr. Machen:

Q. I want to ask you one or two questions. You said that in some of these earlier statements shipments by tenants were not included? A. I could not tell from the records whether they were or were not.

Q. Certainly they were not included in the later statements? A. Yes. Not necessarily included. Not in- 298
cluded.

Q. Unless they sell their output to the Coal Company? A. No, not necessarily. That is as far as the Lehigh Valley Coal Company's production is concerned. As far as the railroad shipments are concerned, of course, it is given.

Q. It is transported by the railroad and is included in the coal transported by the railroad? A. Yes.

Q. But it is not included in the tonnage under the railroad control? A. No.

Q. That applies to the tenants of the New York & 299
Middle Coal Field Railroad & Coal Company other than to the Lehigh Valley Coal Company, doesn't it? A. I could not tell you offhand from what properties the New York & Middle Coal Field Railroad are shipping because I don't know that as a concern on the road. We know our collieries by the name of the breaker that is given to them, and the person that is operating it.

Q. You do not include them—you make no investiga- 300
tions to ascertain who are tenants of the New York & Middle Coal Field Company? A. Absolutely none, none whatever.

Q. So that so far as this statement is concerned the question as to whether an operator is a tenant of the New York & Middle Coal Field Railroad and Coal Company is quite immaterial? A. It does not enter into it. As the statement says it is based on tonnage, volume shipped over the Lehigh Valley regardless of whether

301 the man owns the mine from which the coal may be taken or somebody else. That is not a factor at all in arriving at those percentages.

Q. In the same way in arriving at these percentages you make no investigation as to coal which is shipped in pursuance of a covenant to ship preferentially over the Lehigh Valley Railroad? A. None whatever. That statement is based upon—if the Coal Sales Company or any other party is taking the output we combine that as a particular colliery shipment regardless of whether
302 he takes all of it or not.

Q. You said that Markle & Company was included in the purchased coal? A. He was included in arriving at these percentages.

Q. Do you know whether Markle coal is purchased or not? A. I don't know about that.

Q. How did you come to include Markle coal in these percentages; under whose direction did you do it; or did you simply find it a tradition in your office? A. It was because the Lehigh Valley Coal Sales Company was taking care of the output. Now, upon what basis, I don't
303 know.

Q. Yes, but prior to the formation of the Lehigh Valley Coal Sales Company? A. The conditions were the same as far as the Railroad Company was concerned.

Q. You treated that as coal controlled by the Lehigh Valley Coal Company? A. Yes, as coal controlled by the Lehigh Valley as I said before included, and even with Markle's tonnage there would be some shipment Markle made themselves on their own individual account which is included in arriving at that percentage because
304 our record does not separate between what Thomas Jones ships or John Smith ships.

Q. Yes, but do you know whether the Markle Company observed the written contract between it and the Railroad Company? A. I don't know anything about any contract between the Markle Company and the Railroad Company.

Q. You had nothing to do with that? A. Certainly not.

Q. Some reference has been made in your examination by Mr. Boles to the large increase of these percentages of the controlled coal shipped in 1906 over 1902, and in that connection I want to ask you whether Coxe Brothers & Company, Inc., was not purchased by the Lehigh Valley Railroad Company in the year 1905? A. Yes, sir. 305

Q. Wasn't the tonnage of Coxe Brothers & Company included in the percentage of controlled coal in 1906? A. It was.

Q. But was it or not included in the percentage of 1902? A. It was individual railroad shipments at that time. 306

Q. It was treated as an individual or independent? A. It was not shipped over the Lehigh Valley Road. It was either as tracked or as joint company, the same as anything else we might get from a foreign road.

Mr. Boles: You got it from the D. S. & S?

The Witness: We got whatever they turned over to us on joint business. The rest of it they hauled themselves.

Mr. Boles: You could not tell where the D. S. & S. got it? 307

The Witness: No, sir.

Q. Do you remember whether the Warrior Run Mining Company was not purchased by the Lehigh Valley Railroad in the year 1904? A. I could not answer that question, I don't know.

Q. But you do know if it was purchased, its tonnage was included in 1906, that is, if it was purchased in 1902, its tonnage was included in the percentage of controlled coal in the table of statistics you have given us, but was not included prior to its purchase in the table for 1902, unless it was purchased by the Coal Company? A. That is right. 308

Q. Do you know whether the Kingston Coal Company to which reference has been made is a tenant of the Lehigh Valley Coal Company? A. I do not know.

Q. Do these percentages include—I don't mean the percentages on the controlled coal—but do the tonnage

309 shipments of coal over the Lehigh Valley Railroad with reference to which these percentages are calculated, does that total shipment of coal over the Lehigh Valley Railroad include coal which does not originate on the line of the Lehigh Valley Railroad, but is received by it from some connecting carrier, or is there any such coal? A. Yes, it is possible that there may be some in there in prior years.

Mr. Boles: Do we get coal from the Pensylvania Railroad at Mr. Carmel?

310 The Witness: No anthracite, no, I don't know as there was anything in 1913 to speak of, but there may have been some in 1912 or prior years from certain roads.

Mr. Boles: Would you get some from the D. & H.?

The Witness: No.

Mr. Boles: How about Jersey Central from the West?

The Witness: There is some. There was
311 some in the earlier years. I don't think there was anything in 1913, but there may have been some in the early part of it; I could not tell from memory.

Q. There is very little anthracite coal transported by the Lehigh Valley Railroad which does not originate on its own line, isn't that so? A. Yes, a very small percentage.

Q. Do you know whether there is any coal shipped
312 over the—any anthracite coal—shipped over the Lehigh Valley Railroad by any coal company controlled by another of the anthracite coal roads, the Lehigh & Wilkes-Barre or the Hillside, or the Susquehanna Coal Company, or any of these other coal companies that are controlled by the Railroad? A. I don't know anything about the control of the coal companies by the Railroad; I could not answer that question.

Q. I will ask you this then; is there any coal shipped over the Lehigh Valley Railroad by any of the follow-

ing companies; The Lehigh & Wilkes-Barre Coal Company, the Lehigh Coal & Navigation Company, the Hudson Coal Company, the Delaware Lackawanna & Western Coal Company, the Hillside Coal & Iron Company, Pennsylvania Coal Company, the Scranton Coal Company, the Philadelphia, Reading Coal & Iron Company or the Susquehanna Coal Company? A. Do you mean during this particular period? The year ended 1913? 313

Q. Yes; we will take 1913? A. Lehigh & Wilkes-Barre colliery shipped some coal; that is, it came from the collieries of the Lehigh & Wilkes-Barre Coal Company. 314

Q. It was a very insignificant amount, was it? A. It did not amount to very much, no, sir.

Q. To what points was it shipped; in general I mean, east or west or north or south? A. It went usually, the greater part of the shipment, went west.

Mr. Boles: Several years ago it was a very large amount, wasn't it?

The Witness: Yes, some years ago, prior to 1912, it was considerable. 315

Q. What do you mean by considerable? A. Well, it may amount to 150,000 tons a year.

Q. None of the others ship over the Lehigh Valley Railroad? A. No, there might have been an occasional car come from the D. & H. or some point like that, but not in any quantity. It was not in any quantity at all.

Mr. Boles: That Lehigh & Wilkes-Barre tonnage continued all through the year 1912, didn't it? 316

The Witness: I think it did. At least during the Lake navigation season.

Q. When did the Lake navigation season close? A. It closed usually when the lake freezes over, about December.

Q. It would include November then? A. Yes; there would be shipments in November.

317 Q. Did you have anything to do with the preparation of the answers given by the Lehigh Valley Railroad to the questions propounded by the Interstate Commerce Commission in the pending enquiry as to anthracite coal rates? A. I prepared all the anthracite coal data in connection therewith.

Q. How did it come then that the answer to question No. 34 showed no coal shipped by any of the coal companies that I have mentioned, the Lehigh & Wilkes-Barre and the Lehigh Coal & Navigation Company, and
318 so forth?

Mr. Boles: Before you answer that I want you to see the answer.

Mr. Machen: Here is the question, show the witness the question at the same time.

A. (After reading) The answer is correct, absolutely.

Q. State what it shows? A. Do you want the figures?

Q. Yes? A. Prepared sizes 348 tons; pea, 710; smaller sizes 13,756; total 14,814. That is for the Le-
319 high Valley Coal Company.

Lehigh Valley Coal Sales Company: 630,815, prepared sizes; pea coal 64,392; smaller sizes 153,855, total 849,062.

Other shippers 173,010—that is prepared sizes; pea coal 23,739; smaller sizes 77,952, total 274,341, making a grand total of prepared sizes of 804,173; pea coal, 88,841 and smaller than pea 245,203; grand total 1,138,217.

Supply coal: L. V. Coal Company 8,248 prepared sizes; pea coal 7,096; sizes smaller than pea 51,607, total 66,951, making the grand total of prepared sizes 812,421;
320 pea coal 95,937; sizes smaller than pea coal 296,810, 1,205,168.

By Mr. Warren:

Q. Your Lehigh Valley Coal Company is starred where you start out with your first shipment, isn't that so? A. Yes, sir.

Q. Read what the starred foot note is. A. "Lehigh Valley Coal Company shipments were not for commer-

cial purposes but were consignments of coal either to 321
use for boiler purposes or employes or for the Wyoming Valley Water Supply Company, a subsidiary of the Lehigh Valley Railroad, all being made within the state of Pennsylvania." There was no individual shipper. That coal is separate.

By Mr. Machen:

Q. Now, won't you read the question to which that was an answer? A. (Reading.) "Question 34. Give the approximate number of gross tons each of prepared 322
sizes, pea and sizes smaller than pea of anthracite coal shipped over the respondents line in the month of November 1912, showing commercial coal and company supply coal separately and classify by shippers as follows:

(A.) The Lehigh & Wilkes-Barre Coal Company.
(B.) The Lehigh Coal & Navigation Company.
(C.) Hudson Coal Company.
(D.) The Delaware Lackawanna & Western Coal Company.
323
(E.) Hillside Coal & Iron Company.
(F.) The Pennsylvania Coal Company.
(G.) The Lehigh Valley Coal Company.
(H.) Markle Coal Company.
(I.) The Philadelphia, Reading Coal & Iron Company.
(J.) The Susquehanna Coal Company.
(K.) All other shippers.
(L.) Total."

Q. Then do I understand you to say that in your answer, the answer which you prepared to that question, 324
you included under the head of other shippers coal shipped by the Lehigh & Wilkes Barre Coal Company? A. No, sir there was no shipments during the month of November or they would have been shown there.

Q. Now, won't you please calculate for us what percentage the coal shipped by independent shippers in this month is of the total shipments, that is, what percentage 274,341 is of 1,205,168? A. 22%. It would be a little better; it would be almost 23.

325 Q. Do you know whether the Lehigh Valley Coal Company paid any freight on the shipments of supply coal shown there? A. No, sir.

Q. You don't know? A. They did not.

Q. They did not? A. No, sir.

Q. And how about the shipments to the Wyoming Valley Water Supply Company? They paid there.

Q. But the coal company did not? A. No.

Mr. Boles: Do you know how the coal was bought?

326 The Witness: I do not.

Mr. Boles: Two people would not pay freight on it?

The Witness: No.

Q. How about the bituminous coal from the Snow Shoe Lands; how was that dealt with by the Railroad; is that treated as coal belonging to the Railroad Company or belonging to the Coal Company? A. Why, the revenue coal is treated as other revenue coal; treated the 327 same as any revenue coal originating on any foreign line shipping over the Lehigh Valley.

Q. Some of the coal shipped from mines in the Snow Shoe Lands is then revenue coal, is it? A. Yes, sir.

Q. How much, do you know? A. I don't know; I couldn't say.

Re-Cross Examination by Mr. Boles:

Q. Mr. Miller, were you present at the conference with Commissioner Lane in Washington on January 20th, and 328 21st, 1913, with reference to the answers in docket No. 4914? A. No, sir.

Q. You were not present? A. No, sir.

Q. The record shows that at that conference—and this is a stenographic record made by the official stenographer, is is marked here official copy—as to question 34 the company pointed out that it would be a great deal of work for instance for the Pennsylvania Railroad to go over all their anthracite billings and to pick out for the month of November, 1912, what was billed by the Le-

high & Wilkes-Barre Company and what by the other 329
coal companies individually and separately, an' Com-
missioner Lane then said that that was not the int tion,
and he states at page 136 as to the Jersey Central; for
instance, give us your two principal companies including
under "k" all the others; and Mr. Reynolds said that it
would be infinitely simpler and I think you could get in-
formation perfectly reliable for the purpose of all of us,
all other shippers, by simply going to the shippers and
getting their records and putting them in without a way-
bill order, if that will be satisfactory; and Mr. Lane says
I think it is satisfactory. Now, at some other place in 330
this record—I cannot lay my hands on it right immedi-
ately—

> Mr. Machen: What is the date of that?
>
> Mr. Boles: January 20th, 1913. Oh, here it is, page 139, I say myself, couldn't that account "k" be amended by showing all other shippers from point of origin on respondent lines? Commissioner Lane says, that probably will clear up the whole thing, and that was how it was done. We 331
> included the coal companies of which we owned the stock and then the other items which shows that "all other shippers" includes everybody else; so that does include the tonnage of the Lehigh, Wilkes-Barre Coal Company.

By Mr. Warren:

Q. Mr. Miller, another question: you spoke of the shipments by the Lehigh Valley Coal Sales Company since March 1st, 1912; do you know the practice as to how the freights are paid by that company: is that with- 332
in your jurisdiction and knowledge? A. We render the bills, that is all.

Q. You draw drafts, do you not? A. Yes, sir.

Q. On the Lehigh Valley Coal Sales Company? A. We do, yes.

Q. Three or four days after, the 7th, the 14th, 21st and the last day of the month? A. Yes.

Q. And those drafts are sent over here and are paid, are they, on presentation? A. I think so.

333 Q. And, of course, you have published tariffs as to the anthracite freight rates? A. Yes.

Q. And, of course, these bills conform to the public tariffs' rates? A. Entirely.

By Mr. Boles:

Q. Now, as to the tonnage you say shipped to the Wyoming Valley Water Supply Company, you have no knowledge that they pay the freight on that coal? A. No, I have not.

334 Q. I thought you said they paid you freight in your direct testimony? A. I believe the answer to that question was whether the Lehigh Valley Coal Company paid freight on the Wyoming Valley Water Supply Company load. That was my answer to that question.

Q. Does the Wyoming Valley Water Supply Company pay freight on that? A. They do, but not through our direct bill. We bill the Lehigh Valley Coal Company for the freight and they include the price of the coal and freight in their bill against the party who pays it.

Q. How do you get the money? A. From the Lehigh
335 Valley Coal Company.

Mr. Boles: That is it; then they pay it.

By Mr. Warren:

Q. Being familiar with the shipments of anthracite over the Lehigh Valley Railroad I assume they vary from month to month, but that during certain seasons of the year there are larger shipments than during other seasons of the year, is that true or is it not A. Yes, sir.

336 Q. Would or would it not be within your knowledge and proper to say that, say the month of November, would be a typical enough month, might not January be just as typical of the winter season as November, to illustrate? A. It might.

By Mr. Machen:

Q. One question, Mr. Miller; did that statement that Mr. Boles made as to the conference with Commissioner Lane refresh your recollection in any way or alter your

answer? A. I could not from memory now say that this 337
statement contained any memorandum about Wilkes-Barre coal, but with Mr. Boles' statement—I have the question 34—that it was thrown into other shippers, why that is correct.

Q. You simply don't remember anything about it? A. Oh, no, I could not possibly remember the items that go into that statement; I could not possibly do it. It is pretty nearly two years ago.

By Mr. Gordon:

Q. Mr. Miller, do you know whether the Lehigh Val- 338
ley Coal Company formerly had very large storage plants at places like South Plainfield, New Jersey, and other places near the consuming market? A. Yes.

Q. To these storage plants they shipped large amounts of coal during the summer months? A. Yes, sir.

Q. And that practice is still followed by the Lehigh Valley Coal Sales Company? A. Yes, sir.

Q. So that when the great rush of the winter season 339
comes on a large proportion of the anthracite coal sold at the market by the Lehigh Valley Coal Sales Company or formerly by the Lehigh Valley Coal Company was stored coal which they had been storing up during the summer.

Mr. Warren: I object to that question. The witness is not qualified to answer. He can only say from what somebody told him; the witness not having been shown to have any relation with the Lehigh Valley Sales Company in any way, 340
shape or manner, and I object to the witness' competency to testify.

Q. Can you make that statement as to the Lehigh Valley Coal Company? A. No, sir, I cannot.

341 **George H. Foster,** called on behalf of the Petitioner, being first sworn, testified as follows:

Direct Examination by Mr. Gordon:

Q. Your residence, Mr. Foster? A. I live in Goshen, New York.

Q. What is your present position? A. General Land and Tax Agent for the Lehigh Valley Railroad Company.

Q. Where is your office? 143 Liberty Street.

342 Q. How long have you been connected with the Lehigh Valley Railroad Company? A. Since January 1st, 1904.

Q. How long have you held your present position? A. I have been General Land and Tax Agent since October, 1909.

Q. What was your position prior to that? A. Real estate agent.

Q. What are the duties of your office? A. Have general charge of real estate and tax matters.

343 Q. You would be entirely familiar with the leases of property by the Lehigh Valley Railroad Company to coal dealers? A. Oh, yes.

Q. In fact your signature would appear on a great many of those leases? A. Yes.

Q. On all of them perhaps? A. Not on all of them, no.

Q. But nearly all? A. On most of them.

Q. In any case you are entirely familiar with the general provisions of those leases? A. I am familiar with them.

344 Q. The Lehigh Valley Company does lease coal yards adjacent to its lines to a considerable number of dealers in anthracite coal, retail dealers and wholesale dealers, does it not? A. Yes.

Q. Could you tell us roughly how many of such dealers lease their yards from the Lehigh Valley Railroad Company? A. Oh, somewhere around 250.

Q. In a general way these yards are adjacent to the tracks of the Lehigh Valley Railroad Company at their terminals in various communities? A. Not so much at their terminals as it is on the line of their road.

Q. But along the tracks? A. They are along the 345
tracks of the railroad, yes.

Q. Did you prepare, or did you have prepared under your direction, the answer of the Lehigh Valley Railroad Company to question No. 16 of the questions propounded by the Interstate Commerce Commission in the so-called Docket No. 4914, the pending investigation of anthracite rates? A. Let me see what it was. (After reading). Yes.

Q. Will you read that question? A. (Reading):

"Question No. 16.—Give for the year ended 346
June 30, 1912, the following facts concerning each trestle, shed, wharf, dock, scales, coal stocking plant, coal storage plant, coal pocket, bin, building, and office space (including land as sites for such properties), owned by respondent and used incident to the transportation, handling, or sale of anthracite coal during the said year:

(A) Brief description of property.

(B) Location, city and street.

(C) Value assessed for taxation, or actual valu- 347
ation if taxes are not assessed on a valuation basis.

(D) The amount of taxes and insurance paid for year ended June 30, 1912, on said properties.

(E) If respondent has leased said properties to another party, the name of the lessee and the amount of the annual rental or income paid to respondent by the lessee. Also submit copies of all contracts, leases and agreements whereby the said properties are or were so leased or rented."

Q. In answer to that question did you submit to the 348
Interstate Commerce Commission among others a lease which I now show you of property in Perth Amboy, New Jersey, dated November 29th, 1911, to John W. Obuck? A. Yes.

Mr. Gordon: I would like to introduce that lease into the testimony.

Received in evidence and marked **Government Exhibit No. 34.**

349 A. This is a copy of the lease.

Q. It is an accurate copy, is it not? A. Yes, sir.

Mr. Boles: I object to the offer on the ground that it is a departure from the petition.

Q. Will you read in this lease to John W. Obuck the twelfth paragraph?

Mr. Boles: Note an objection.

350 A. (Reading):

"12th. In consideration of the low rental herein reserved, the said Lessee hereby covenant and agrees during the continuance of this lease to ship or cause to be shipped over the railroad system of the Lehigh Valley Railroad Company and over connecting and forwarding transportation lines preferred by it, to the exclusion of all other means of transportation whatsoever, and in such manner as to give the said Railroad Company the long haul, all the freight the shipment of which the said
351 Lessee can control or influence, shipped from the above described premises to its ultimate destination, or shipped from its point of departure to the said premises; provided always, that the freight rates on such shipments be as low as the rates charged to other shippers by the said Railroad Company for like contemporaneous service."

Q. Will you also read into the record the sixth clause of the same lease? A. (Reading):

352 "6th. The Lessor expressly reserves the right to terminate this lease upon written notice of not less than thirty days, with or without assigning any reason therefor. Any notice of termination by the Lessor shall be good if served personally upon the Lessee or posted upon the leased premises. If the Lessee shall fail to remove any material, building or improvements, lawfully belonging to and removable by the said Lessee, within the

time prescribed by any notice of termination here- 353
of, or before the stated termination of this lease, the Lessor may appropriate the same to its own use without allowing any compensation therefor, or may remove the same at the expense of the Lessee, and the said Lessee agree to and do hereby waive all statutory requirements in regard to notices to quit or termination of the lease."

Q. This was a printed form? A. Yes, sir.

Q. And the type of form showing there were a great 354
many examples along your lines? A. So far as the sixth clause is concerned, yes.

Q. And also the twelfth clause? A. No.

Q. Have you looked at the petition, or read the list of names in the petition, pages 52 to 55? A. I have.

Q. Were any of those leases, any of the leases to the persons there given, leases which contained a routing clause substantially similar to the clause which you have just read? A. They did.

Q. The twelfth clause I mean? A. I think they all do, 355
yes.

Q. So there were really a large number of coal dealers along your line leasing coal yards under leases containing the twelfth clause which you have just read and also the sixth clause which you have just read? A. No, I wouldn't say there was a large number. There were 272 leases submitted by us in these three books, and of those 272, 118 of them I think contained this so-called shipping clause.

Q. 118 did? A. 118.

Q. Did you also prepare the introductory statement 356
which precedes the lease in the answer as filed with the Interstate Commerce Commission in which is stated the reproductive valuation of the land leased to Mr. Obuck, the basic valuation of the land and the annual rental? A. It was prepared under my direction.

Q. You believe it is true? A. Yes, sir.

Q. Will you read the reproductive valuation and the basic valuation of the land? A. Reproductive valuation of land $9,365; basic valuation of land $7,492; annual rental $60.

357 Mr. Boles: Does the Government admit those figures to be correct?

Mr. Gordon: It does not admit them to be correct; it puts them in as they are, as evidence of what is said to be the fact.

Q. From your answer No. 16 to the Interstate Commerce Commission I show you a lease dated March 2, 1911, between the Lehigh Valley Railroad Company and Marcus E. Good of premises at Allentown, Pennsylva-
358 nia; will you look at that lease and see if it contains also the routing clause which we have referred to? A. Yes, it does.

Q. Will you read from the introductory statement prepared under your authority the figures given for the basic valuation of the land, the reproductive valuation of the land, the value of the trestle erected and the rental reserved? A. Reproductive valuation of land $8,250; basic valuation of land $4,125; reproductive valuation of trestle $14,401; less depreciation on ex-
359 isting structure $3,481. The trestle contains twenty-four bins of which ten are leased to Marcus E. Good at the annual rental of $180.

Q. What do you mean by the basic valuation of the land as distinguished from the reproductive value of the land? A. Basic valuation of land is value of land as land; reproductive valuation of land is the value of the land to a railway company giving proper attention to the method of acquisition, the severance damage and the other incidents to its purchase by a railroad company for railroad purposes.

360 Q. A reproductive valuation does not include the value of the structure erected upon the land? A. The reproductive value of the land does not include any structure on the land.

Q. The distinction if I understand you correctly between the basic valuation and the reproductive valuation is the distinction between the value of the land as ordinary land and its value for railroad purposes? A. Not entirely; the basic valuation is the valuation of ordinary land; the reproductive valuation is the value

—is more the cost to the Railroad Company to get that land. 361

Q. How do you estimate the basic value without considering the cost of the land?

Mr. Boles: Wait. We didn't say the cost of the land.

Q. What did you say?

Mr. Boles: He said what the cost would be for the Railroad Company to get it.

362

Q. I show you a lease given in your answer to question No. 16, Interstate Commerce Commission docket No. 4914, of premises at Allentown, Pennsylvania, to Edgar J. Lumley, dated, October 17th, 1907; does this contain the routing clause you referred to? A. It does.

Q. Will you read the introductory statement prepared under your authority, giving the reproductive valuation, the basic valuation, and so forth? A. Reproductive valuation of land $15,180; basic valuation of land $10,120; reproductive valuation of trestle $3,936; less 363 depreciation on existing structure $876; annual rental $250.

Q. I show you in your answer to question No. 16, Interstate Commerce Commission Docket No. 4914, a lease of premises also at Allentown, Pennsylvania, to John E. Schnon.

Mr. Boles: Is that in the petition?

Mr. Gordon: I am not certain whether it is or not.

364

Q. Dated August 21, 1907; does that also contain the routing clause referred to? A. I don't see it.

Mr. Boles: Does it contain it?

The Witness: It does not.

Q. Will you read the sixth clause of that lease? A. Yes. (Reading):

"The Lessor expressly reserves the right to terminate this lease upon written notice to the

365 Lessee of thirty days, with or without assigning any reason therefor. Any notice of termination by the Lessor shall be good if served personally upon the Lessee or posted upon the leased premises. If the Lessee shall fail to remove any material, building or improvements, lawfully belonging to and removable by the said Lessee, within the time prescribed by any notice of termination hereof, or before the stated termination of this lease, the Lessor may appropriate the
366 same to its own use without allowing any compensation therefor, or may remove the same at the expense of the Lessee."

Q. Will you read also the introductory statement as to the reproductive valuation of the land and so forth? A. Reproductive valuation of the land $4,450; basic valuation of land $2,225. Reproductive valuation of trestle $5,272; less depreciation on existing structure $1,174; annual rental $200.

367 Q. I show you in your answer to question No. 16 a lease also of premises at Allentown to Laubach & Brother, dated April 9th, 1907, and ask you if that also contains the termination clause you read in the preceding lease? A. It contains a thirty day termination clause, apparently the same as the one I read in the other lease.

Q. Will you read also the introductory statement as to the valuation of the land? A. Reproductive valuation of land $9,060; basic valuation of land $4,530, annual rental $50.

368 Q. From the same answer, No. 16, I show you a lease dated April 1, 1909, between the Lehigh Valley Railway Company and the Yates-Lehigh Coal Company of Buffalo, New York.

Mr. Warren: Is that on Louisiana Street?
Mr. Gordon: Yes.

A. I know that lease.

Q. Does that also contain a routing clause? A. That also contains the so-called shipping clause.

Q. And also the termination clause which you re- 369
ferred to previously? A. It also contains a short term termination clause, a thirty day termination clause.

Q. Will you also read the introductory statement to that? A. Assessed valuation of land and trestle $26,900.

Q. What are the taxes? A. Taxes paid on land and trestle $871.07; insurance paid $66.50.

Q. What is the rental? A. Annual rental $250, and one cent a ton for placing cars on trestle by the Lessor.

Q. The one cent a ton, of course, is a switching charge, so-called, is it not? A. A charge for placing cars on 370
the trestle.

Q. Which was a service performed by the Railroad Company independent of its furnishing a coal yard? A. All connected with the coal yard. It is independent of the leasing of the land.

Q. But it is an additional service other than a service of the Railroad Company as a common carrier to all persons? A. Yes, sir.

Q. I show you from your answer No. 16, Docket 4914, lease of premises at Canastota, New York, dated August 371
8th, 1910, to Hamilton Farnham; does that also contain the routing clause? A. It does.

Q. Will you read the introductory statement? A. Reproductive valuation of land $712; basic valuation of land $237; reproductive valuation of trestle $9,520; less depreciation on existing structure $2,856; trestle containing eight pockets of which four are leased to Hamilton Farnham at an annual rental of 10 cents a ton on all coal dumped into the four bins, with a minimum charge of $73.65 per annum.

Q. I show you from your answer No. 16, Docket 372
No. 4914, a lease dated March 17th, 1908, of premises at Cortland, New York, to C. M. Jennings and Arthur T. Dunn; does that also contain the routing clause? A. It does.

Q. Will you read the introductory statement? A. Reproductive valuation of land $5,949; basic valuation of land $2,975; leased at an annual rental of $35.

Mr. Gordon: To save repetition, all of the leases that I produce hereafter are from the In-

terstate Commerce Commission, Docket No. 4914, answer No. 16, and are from the Lehigh Valley Railroad Company to coal dealers.

Q. I show you a lease of premises also in Cortland, New York, dated July 15th, 1911, to Peckham & Morgan, does that lease also contain the routing clause? A. It does.

Q. Will you read the introductory statement? A. Reproductive valuation of land $1,902; basic valuation of land $951; annual rental $5.

Q. I show you a lease of premises in Jersey City, New Jersey, dated August 1st, 1893, to the Greenville Coal & Ice Company; does that also contain a routing clause? A. It contains a clause substantially similar to the others, yes.

Q. Will you read also the introductory valuation statement? A. Reproductive valuation of land $59,874; basic valuation of land $39,916; assessed valuation of improvements $15,000; annual rental $1,500.

Q. Will you read the covenants in this lease which I indicate?

A. (Reading)

"Covenanted and agreed that if the freight bill paid by the party of the second part to the Eastern and Amboy Railroad Company, or the Lehigh Valley Railroad for coal and freight, merchandise transported to and from the said premises by the facilities as hereinafter agreed to be used, shall in any year or years during the said term amount to a sum not less than $30,000, then the rent of said premises shall during such year or years be at the rate of $1200 per year, and shall be payable in equal monthly instalments as above provided."

That lease was originally made for 25 years.

Q. The lease is still in effect? A. Oh, yes; it is still in effect and cannot be terminated except under certain conditions. It does not contain a short terminating notice.

Q. I show you a lease of premises at Jersey City, New 377
Jersey, to William A. Pinto Company, dated July 26th, 1910; does that contain both the routing clause and the short termination notice? Yes; that lease contains a routing clause and a thirty-day terminating clause.

Q. Will you read the introductory statement? A. Reproductive valuation of land $23,700; basic valuation of land $15,800; leased at an annual rental of $200.

Q. I show you a lease of yard premises at Jersey City to L. Wertheim Coal & Coke Company, dated June 12, 1906; does that also contain the routing clause and a 378
terminating clause? A. Yes.

Q. What was the introductory statement as to the valuation? A. Reproductive valuation of the land $62,290; basic valuation of land $41,527; annual rental $1 and taxes. Further covenant on the part of the tenant to erect substantial improvements on the property which will revert to the owner on the expiration of the lease.

Mr. Machen: What is the length of the term?
The Witness: Fifteen years. 379

Q. With the termination clause running in favor of the Railroad Company? A. No, sir. The termination clause provides if the Railroad Company terminates the lease it must pay the tenant the value of the property, the value of the improvements.

Q. Otherwise the lease is to run for twenty years? A. Fifteen years.

Q. Will you read also the eighth clause of that lease? A. (Reading): 380

"The Lessee further covenants and agrees that it shall and will during the first year of the term of this lease handle or cause to be transported by rail to the said premises a minimum tonnage of 30,000 tons of coal, during the second year of this lease a minimum tonnage of 50,000 tons of coal; during the third year thereof a minimum tonnage of 75,000 tons of coal, and during the fourth and every year thereafter so long as

381 this lease shall be in force, a minimum annual tonnage of 100,000 tons of coal, due allowance being made for riots, strikes or stoppage of labor in mines, or on the railway of the lessor company or its allied lines. If the said lessee shall fail during any year to deliver the guaranteed minimum tonnage hereinbefore provided for the lessor shall have the right to terminate and cancel this lease upon giving six months notice of termination to the said lessee, anything
382 herein to the contrary notwithstanding."

Q. I show you another lease of premises also at Jersey City, to the L. Wertheim Coal & Coke Company, dated April 30th, 1908, and ask you if that also contains a routing clause? A. Yes.

Q. Will you read the introductory statement? A. Reproductive valuation of land $77,100; basic valuation of land $51,400; annual rental $1 and taxes.

Q. Will you read the eighth clause? A. (Reading):

383 "Eighth. The lessee herein, as a further consideration for this lease, further covenants and agrees that it shall and will during the year beginning November 1st, 1908, handle or cause to be transported by rail over the railroad of the Lehigh Valley Railroad system to the said premises described in the foresaid lease, dated June 12, 1906, or to the premises herein described, a minimum tonnage of 90,000 tons of coal, and during the ensuing year and during every year thereafter a minimum annual tonnage of 120,000
384 tons of coal; due allowance being made for riots, strikes or stoppage of labor in the mines, or on the railroad of the Lessor company, or its allied lines. The intent of this clause being to increase by 20 percent the minimum annual guaranteed tonnage provided for in the aforesaid lease dated June 12, 1906.

If the lessee shall fail during any year to deliver the guaranteed minimum tonnage herein-

before provided for, the lessor shall have the 885
right to terminate and cancel this lease and the said lease of June 12, 1906, upon giving six months' notice of termination to the said lessee, anything herein or therein contain- to the contrary notwithstanding."

Q. I show you a lease of premises in Newark, New Jersey, dated August 29, 1905, to Marvin Dodd and John J. Voorhees, trading as J. Van Name & Company? A. Yes.

886

Q. This lease contains a thirty day termination clause, does it not? A. It does.

Q. Will you read the introductory statement? A. Reproductive valuation of land $5,775; basic valuation of land $3,850; annual rental $10.

Q. I show you a lease of premises at Perth Amboy, New Jersey, dated December 1, 1903, to Patrick Convery? A. Yes.

Mr. Boles: Date please.

The Witness: December 1, 1903.

887

Q. Will you give me the statement as to the valuation? A. Reproductive valuation of land $9,985; basic valuation of land $6,656; reproductive valuation of trestle $1,800; less depreciation on existing structure $600; annual rental 10 cents a ton with a minimum of 200 tons; annual revenue during the period in question $401.13. Annual revenue during the period ending June 30th, 1912, $401.13.

Mr. Boles: Has that a shipping clause? 888

The Witness: It has not.

Q. I show you lease of premises at Phillipsburg, New Jersey, to George W. Hawk, dated March 24, 1905? A. I have it.

Q. Does that contain a thirty day termination clause. A. It is the lease of March 24th, 1905. Yes, it contains a termination clause.

889 Q. And the valuation? A. Reproductive valuation $14,375; basic valuation $7,188; reproductive valuation of trestle $5,133; less depreciation on existing structure $376; annual rental $5.

Q. I show you a lease also at Phillipsburg to James Flem[illegible], dated September 29th, 1910? A. Yes.

Q. Does that also contain the routing clause in consideration of the low rental herein reserved and so forth? A. Yes, sir, it contains practically the same shipping clause as I have read in the other case.

890 Q. Read the introductory statement? A. Reproductive valuation of land $4,512; basic valuation of land $4,512; assessed valuation of trestle $10,000; annual rental 10 cents a ton with a minimum of $350; revenue received during the year ended June 30th, 1913, $316.33.

Q. That 10 cents a ton means 10 cents a ton shipped in or out of the premises? A. No, it means 10 cents a ton for every ton of coal dumped through the trestle.

Q. All of which according to the lease, the lessee is bound to ship over the lines of the Lehigh Valley Railroad Company? A. All of which according to the lease

891 he is bound to, yes.

Q. I show you a lease of premises at Irvington, New Jersey, to the Lehigh Valley Coal Company, dated February 23, 1912; does that contain the usual routing clause [illegible] consideration of the low rental herein reserved and so forth? A. The lease originally contained that clause, yes.

Q. It did? A. Yes.

Q. What do you mean by originally? A. It is no longer in the lease; it has been taken out.

892 Q. How long ago? A. By consent of the parties. Oh, four or five months ago.

Mr. Machen: By written—

The Witness: By written cancellation of the clause.

Mr. Boles: Since these leases were discovered or since I discovered them since we filed this answer to the Commission, on the advice of counsel, which was my advice, I think that practically all

of these shipping clauses have been stricken out 393
and that was long before this case was thought of or begun or heard of.

Mr. Gordon: What was the manner in which this was stricken out?

Mr. Boles: By amended agreement with the party with whom they were made.

Mr. Gordon: Were the old leases returned and canceled and new leases issued?

The Witness: We did it in three different ways. The shipping clause is now out of all leases to 394
coal shippers with three exceptions. These clauses were stricken out in three different ways. First in one way by striking out the clause and the parties who signed the lease initialling the cancellation on the margin—

Mr. Gordon: That is both parties?

The Witness: Both parties. The second way was by endorsement on the back of the original lease of a supplemental clause, signed by both parties agreeing to the elimination of the shipping 395
clause; and the third way was by the preparation and execution by both parties of a supplemental agreement cancelling the shipping clause.

Q. What are the three leases that are still in effect? A. The three leases which still have the shipping clause in it are the two leases to the Wertheim Coal & Coke Company and the lease to the Greenville Coal & Ice Company.

Mr. Boles: State why they have not been changed.

The Witness: They have not been stricken out 396
because the three of them are long term leases.

Q. As to those three the routing clause is still in effect? A. It still is in effect.

Mr. Boles: It is because we cannot change them. State the circumstances about that.

The Witness: They are long term leases and the tenants decline to change the leases in any

397 way because, as they state, they fear that by doing so they will deprive themselves of the benefit of the long term which they have under their leases.

Q. Are you willing to make a new lease on the same terms, I mean with a term of equal length? A. To those three tenants?

Q. Yes. Are you, in other words, willing to strike out the routing clause in that lease and to leave the lease on
398 the same basis it is now? A. We are not only willing to but have asked them to do so and they have declined to do it.

Q. Did you make your offer to them in writing? A. No, by personal interviews.

Q. And your offer was simply to strike out the routing clause and leave the lease otherwise as it originally stood? A. Yes. Mr. Laney of the Greenville Coal & Ice Company told me that he would under no consideration change his lease in any respect.

Q. You did not ask an increase in the rental? A. I
399 talked to him about the rent of the property, but that was not discussed at that time.

Q. Did you ask an increase in the rental? A. At the time of the shipping clause? No.

Mr. Boles: We get $1,500 for that, don't we?

The Witness: Yes.

Mr. Boles: That is an adequate rental from them. I should state that that was done immediately upon these leases being filed with the Commission, and when I discovered the existence of
400 these clauses it was done, long before this suit was instituted.

Mr. Gordon: It was not done until after the leases were filed with the Interstate Commerce Commission then in response to their question?

Mr. Boles: Yes.

Mr. Gordon: And prior to that time this shipping clause had long been in use by the Railroad

Company, in general use by the Railroad Company in its dealing with coal dealers? 401

The Witness: No, sir.

Q. There were at the time you said 118 of these? A. No, there were—I have the exact figure in my office. There were 272 leases filed with the Commission, of which 149 do not contain any shipping clause. The remainder or balance of those contained the shipping clause. The use of the shipping clause was in no sense of the word general; it was more spasmodic, as those figures indicate. 402

Q. It was no more general than those figures indicate?

Mr. Boles: It was no more general, no; it is no more general among those who lease lands for coal yard than those who lease lands for other purposes?

A. It was more general among the other purposes than for the coal dealers. As a matter of fact when we leased a fireman a house at Delano we put the shipping clause in.

Q. But you said it was a printed form? A. No, I did not. At times it was printed in the lease for a short time; and other times it was printed on a paster which we pasted on the lease, and the lease itself was void of the shipping clause. 403

Q. Some of these leases contained the shipping clause many years ago; you have used this shipping clause for a considerable number of years? A. At intervals. At intervals it has been in use for many years, but not continuously, or generally.

Q. Will you read the introductory statement as to the valuation? A. Reproductive valuation of land $20,561; basic valuation of land $15,401; trestle assessed for $12,000; taxes paid on trestle $111.20; land not separately assessed; insurance paid $190; annual rental $1,535 and taxes. 404

Q. Read the rest of it? A. Lease effected March 1st, 1912. Prior to that time a part of the property leased to the Lehigh Valley Coal Company at an annual rental of $1,200.

405 Q. I show you a lease of premises at Jersey City to the Lehigh Valley Coal Company dated Feb. 23, 1912? A. Yes, sir.

Q. Will you read the statement as to the valuation in that lease A. In that lease the reproductive valuation of land $42,800; basic valuation of land $32,240; trestle assessed for $24,000; land not separately assessed; taxes paid on trestle $480; insurance paid $237.50. Leased to the Lehigh Valley Coal Company with permission to sublease to the Lehigh Valley Coal Sales Company, except-
406 ing pockets "B" and "C"; annual rental $2,873 and taxes; tenant also pays insurance. Prior to March 1st, 1912 the property was leased to the Lehigh Valley Coal Company at an annual rental of $1,600.

Q. Without taxes? A. Yes.

Q. And without insurance? A. Yes, without insurance. Pockets "B" and "C" leased to James Coyle at an annual rental of $100.

Q. I show you lease of premises at Newark, New Jersey, leased to the Lehigh Valley Coal Company, February 23, 1912? A. Yes.

407 Q. Does this contain a routing clause? A. It contained a routing clause which has since by consent of the parties been stricken out.

Q. Will you read the introductory statement? A. Assessed valuation of land $12,500; assessed valuation of the trestle $75,000; taxes paid $1,723.75; insurance paid $375; leased to the Lehigh Valley Coal Company with permission to sublease to the Lehigh Valley Coal Sales Company at an annual rental of $9,055 and taxes. Prior to March 1st, 1912, the property was leased to the Lehigh
408 Valley Coal Company at an annual rental of $6,000.

Q. Without taxes? A. Without taxes, yes.

Q. I show you a lease of premises at Rochester, New York, to the Lehigh Valley Coal Company, dated June 20th, 1907; will you read the introductory statement as to that lease? A. There are two leases on all the properties: I don't know whether you have taken the first or second one. I am speaking always of the lease of 1912.

Q. I am speaking at this moment of the lease—— 409

Mr. Boles: Did the 1912 lease have a shipping clause in it?

The Witness: Yes. The 1907 did not.

Q. In 1912, you inserted a shipping clause in that lease of premises where no shipping clause previously existed? A. Yes.

Q. This was just on the eve of the transfer of these premises from the Lehigh Valley Coal Company to the Lehigh Valley Coal Sales Company? A. I don't know 410 anything about that. I do know something about that, because I gave permission to sublet.

Q. Will you read the introductory statement as to the character of these premises concerning the two leases you have been speaking of, were made? A. Reproductive valuation of land, $41,250; basic value of land, $41,250; reproductive valuation of trestle, $76,342; less depreciation on existing structure $39,700. Not separately assessed. Insurance paid, $294.50. Leased to the Lehigh Valley Coal Company with permission to sub- 411 lease to the Lehigh Valley Coal Sales Company at an annual rental of $3,604 and taxes. Prior to March 1st, 1912, leased to the Lehigh Valley Coal Company at an annual rental of $1,600.

Q. Without taxes? A. Without taxes. But I would like to have it appear on the record that the consideration paid by the tenants for all these properties is not wholly expressed in the rental.

Q. You will have the chance to explain that when Mr. Boles cross-examines you. A. All right, but when the 412 contract was renewed there was a great deal more agreed to than the rent.

Q. I show you the lease of the premises at South Plainfield, New Jersey, also to the Lehigh Valley Coal Company, one dated June 20th, 1907, and the other dated February 23, 1912. Does the former of these two leases contain a routing clause? A. No.

Q. Does the second contain the customary shipping clause in consideration of the low rental and so forth?

413 A. The second contained it when it was originally drawn, yes.

Mr. Boles: How does that clause read?

The Witness: The routing clause in the lease of February 23, 1912, reads as follows: "Twelfth. In consideration of the low rental herein reserved——"

Mr. Boles: It has been read.

Q. Will you read the introductory statement? A. Re-
414 productive valuation of land, $7,839; basic valuation of land, $3,920; reproductive valuation of plant, $228,576; less depreciation on existing structures, $13,110. Not separately assessed. Leased to the Lehigh Valley Coal Company with permission to sublease to the Lehigh Valley Coal Sales Company at an annual rental of $10,247 and taxes.

Q. Are you sure that is taxes? A. Yes, I am sure it has taxes. These synopses are not always complete. See the 13th clause of the lease of 1912. Annual rental,
415 $10,247 and taxes and insurance. Prior to March 1st, 1912, the property was leased to the Lehigh Valley Coal Company at an annual rental of $7,500.

Q. Without taxes? A. With taxes on its own property only, yes.

Q. What is the character of the property? A. It is a mechanical plant; hoists the coal up and dumps it in piles.

Q. Will you read the description of it in the beginning? A. It is a mechanical coal storage plant with
416 appurtenances and machinery connected therewith having storage capacity of about 300,000 tons, together with about 26-13/100 acres of land on the south side of the right of way about one mile east of the station at South Plainfield.

Q. You spoke of the property owned by the Lehigh Valley Coal Company, the storage plant of this was erected by the Lehigh Valley Railroad Company, was it not? A. Oh, yes, this plant is owned by the Railroad Company. The property of the Coal Company I

referred to was the coal. The coal itself. That would be their property under which they had to pay the taxes upon the first lease. 417

Q. As a general rule these leases were made for one year, were they not—I am not referring to the exceptions of which you have spoken, which had longer terms, but in general these leases run for one year? A. Yes, with the exception of those which show on the face that they are long term leases. All the rest of them are short term leases with clause for termination on thirty days' notice.

Q. With provision also that if the lessor does allow the tenant to hold over he shall hold over upon the same terms as the original lease? A. Yes. 418

Hearing adjourned to Wednesday, June 24th, 1914, at 10 o'clock, A. M.

New York, June 24, 1914.

Hearing resumed pursuant to adjournment. 419

APPEARANCES AS BEFORE.

George H. Foster, recalled.

Direct-Examination Continued by Mr. Gordon:

Q. At the adjournment yesterday evening we were speaking of the clauses in the leases by the Lehigh Valley Railroad Company to dealers in anthracite of coal yards located along the lines of the Lehigh Valley Railroad with reference to holding over after the expiration of the term stated in the lease. I show you the lease to John W. Obuck, **Government Exhibit No. 34,** and ask you to read the seventh clause of that lease? A. The lease dated November 29th, 1911? 420

Q. Yes. A. (Reading):

> "Seventh: If the Lessor shall permit the Lessee to remain in possession of the above premises, after the expiration of the above stated term,

421 then the Lessee shall occupy said premises subject to all the terms, covenants and conditions hereof; expressly including the right of termination hereinbefore reserved to the Lessor."

Q. And I understand you that at the time the question No. 16 in the Interstate Commerce Commission Docket No. 4,914 was propounded by the Interstate Commerce Commission, all of the leases which you furnished in your answer were in force, either by their original terms
422 or by virtue of this clause in the leases themselves? A. They were all in force during the year ended June 30th, 1912.

Q. And this clause which you have just read, the seventh clause in the lease to John W. Oback, was a regular form inserted in substantially all of these leases? A. Inserted in all of our short term leases.

Q. I understood you to say yesterday that substantially all of your two hundred and odd leases of coal yards to coal dealers were for short terms, usually for a year? A. Yes, sir.

423 Q. And still are? A. Still are. In fact, if you wanted it to appear on the record, out of about 4,000 leases I do not believe we have 50 which are not short term leases. I have about 4,000 leases in my office, and all of them with the exception of not more than fifty, I do not believe there are that many, are terminable, that is, by notice of less than one year, some on thirty days, some on sixty days and some on ninety days, and some on four months and some on six months. But the majority of them, sixty days notice and less would ter-
424 minate them all.

Q. And all these leases which were read in evidence yesterday and all those referred to in the list at pages 52 to 55 of the Government's petition were in effect and operative at the time the questions were propounded by the Interstate Commerce Commission? A. During the period ended June 30th, 1912.

Q. I show you a lease from the Lehigh Valley Railroad Company to Daniel Leeds Miller of a coal yard located at West Elizabeth, New Jersey, dated October

25, 1897, and ask you to read the ninth clause of that 425
lease? A. (Reading):

> "Ninth: This lease is made upon the express condition that the Lessee shall not handle or sell any other coal except such as shall have been mined by the Lehigh Valley Coal Company, or by operators whose collieries are located upon the lines of the Railroad of the Lehigh Valley Railroad Company, or from mines of operators preferred by the Lehigh Valley Coal Company, and shall purchase not less than 1,500 tons of coal 426
> each year during the continuance hereof, exclusively through or from the Lehigh Valley Coal Company."

Mr. Boles: What is the date of that?
Mr. Gordon: October 25, 1897.

Q. Mr. Foster, have you at my request produced five original leases from the Lehigh Valley Railroad Company to the Lehigh Valley Coal Company of premises respectively at Irvington, New Jersey; Jersey City, 427
New Jersey; Newark, New Jersey; South Plainfield, New Jersey and Rochester, New York? A. I have.

Q. Are all five of these leases dated the 23rd day of February, 1912? A. Yes.

Q. Are all five printed upon a printed form marked "Form 15 R. E. D.-7-11-500?" A. Yes, sir.

Q. This was one of your regular forms of coal yard leases? A. Not necessarily coal yard leases. Regular form of lease at that time.

Q. A regular form of lease? A. At that time. 428

Q. What does the heading which I have just read, which appears at the top of each of these leases, "Form 15, R. E. D.-7-11-500," mean? A. It means that form 15, real estate department, printed in the seventh month, 1911, 500 copies were printed.

Q. Then these leases were printed in July, 1911? A. That particular form was printed in July, 1911, yes, sir.

Q. Will you read the twelfth clause of this lease? A. It is the same one I read yesterday. (Reading):

429 "Twelfth: In consideration of the low rental herein reserved, the said Lessee hereby covenant and agree during the continuance of this lease to ship or cause to be shipped over the railroad system of the Lehigh Valley Railroad Company, and over connecting and forwarding transportation lines preferred by it to the exclusion of all other means of transportation whatsoever, and in such manner as to give the said Railroad Company the long haul, all the freight the shipment
430 of which the said Lessee can control or influence shipped from the above described premises to its ultimate destination, or shipped from its point of departure to the said premises; provided, always, that the freight rates on such shipments be as low as the rates charged to other shippers by the said Railroad Company for like contemporaneous service."

Mr. Boles: Don't your copy show that clause is stricken out?

The Witness: It does.

431 Mr. Boles: I object to the question and answer.

Mr. Warren: Does it not also show it is erased in red ink?

The Witness: Yes, a line drawn through it.

Q. When was this done? A. In the early part of 1914.

Mr. Machen: That is, the elimination was effected in the early part of 1914?

The Witness: Yes, sir.

432

Q. I show you the lease from the Lehigh Valley Railroad Company to the Lehigh Valley Coal Company of the premises at Irvington, New Jersey, and ask you to read the provision which appears endorsed upon the back thereof? A. (Reading):

"New York, February 23rd, 1912. The Lehigh Valley Railroad Company of New Jersey, Lessor, hereby consents that the Lehigh Valley

Coal Company, Lessee, may sublet the premises 433
described in this lease, dated the 23rd day of February, 1912, (being land with coal trestle and its appurtenances situated at Irvington, Essex County, New Jersey) to the Lehigh Valley Coal Sales Company under and subject to all the terms, covenants and conditions of the within lease.

Lehigh Valley Railroad Company
of New Jersey,
by George H. Foster, 434
General Land & Tax Agent."

Q. And does a similar provision with slight variation in the description of the premises, such as inserting the fact that the premises are coal storage plants, and so forth, appear upon the back of each of the other four leases which I have shown you? A. It does.

Q. And are those provisions all dated February 23rd, 1912? A. They are.

Q. And that is also the date which appears upon the 435
face of the leases, being the date upon which the lease was made out? A. It is.

Cross-Examination by Mr. Boles:

Q. Mr. Foster, how many leases did you say you had in your department, leases actually in effect? A. Very close to 4,000.

Q. And about what proportion of those are leases for lands used for coal yards or for any purpose in connection with anthracite coal? A. At the present time? 436

Q. At the present time. A. Not more than 250.

Q. Out of 4,000? A. Out of 4,000.

Q. And those 4,000 leases were made over a period of about what time? A. Oh, they extend back to—some of them to 1870.

Q. And has it been the general custom in making those leases, and do the leases themselves show, that shipping clauses have been inserted in them? A. Yes. Oh, yes; some, and not in others.

437 Q. Did you follow any particular practice as to the insertion of shipping clauses in leases? A. No, no particular practice.

Q. Did you get any direction from anybody, connected with the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company, or any other coal company, as to what clauses you should insert in these leases that involved lands which were to be used for coal dealers' purposes? A. No.

Q. Never? A. Never.

438 Q. Did you ever ask for instructions, or get instructions, from anybody connected with any coal company in connection with the making of your leases? A. Never.

Q. Is it your duty to follow the the observance of the covenants of these leases by the Lessees? A. Yes.

Q. That is all of them, all of the 4,000? A. Oh, yes.

Q. Have you ever taken trouble, or have you ever actually followed or looked to the observance of the so-called shipping clauses in these leases? A. Never enforced it.

Q. Did any body ever request you to do so? A. Never.

439 Q. Since what time have you discontinued inserting shipping clauses in your leases? A. At least a year and three months ago, and I think about two years ago.

Q. Why was that done? A. By the advice of counsel.

Q. Who? A. You.

Q. Did you ever have any one from any coal company call upon you to ask whether the shipping clauses were being observed? A. Never.

Q. Did you consider the shipping clauses in those leases virtually dead letters? A. I considered it as

440 meaningless.

Q. Did you so testify in the Yates-Lehigh case at Buffalo? A. I did.

Q. Were you present when the jury made its retrun in that case? A. I was.

Q. Were you a witness in the case? A. I was.

Mr. Machen: What is the case?

The Witness: The Yates-Lehigh case.

Q. Was one of the issues—are you a lawyer? A. I am. 441
Q. And have you practiced law? A. I have.
Q. Was one of the issues in that case the enforcibility and validity of the so-called shipping clauses?

Mr. Machen: Objected to.

A. It was.
Q. Were you in the court room when the jury made its return? A. I was.
Q. And what was it? A. Not guilty.

442 Mr. Machen: Objected to.

Mr. Gordon: On the ground that the burden of proof in a criminal case is different from that in a civil suit, and on the ground that the facts being admitted in the present case the question of the legality of these clauses is a pure question of law for the Court, and generally.

Q. The lease to John W. Obuck, and I believe all of the others which you referred to as having shipping clauses in, has a clause number twelve which has since been 443 stricken out of this lease, and I think you have said all of the others, which starts out as follows: "In consideration of the low rental herein reserved," to what extent did you ever fix the rentals taking into consideration the shipping clause part of the consideration? A. Never.

Mr. Machen: I note an objection to that question on the ground that the best evidence is the written document itself and no parole evidence is admissible to contradict it.

444

Q. Did you ever fix rentals in any event, in any case, taking into consideration whether or not the Lessee agreed to ship over the Lehigh Valley Railroad? A. Never.

Mr. Machen: Same objection.

Mr. Boles: I did not speak about any lease at all. On what ground do you object?

445 Mr. Machen: I think if the lease is in writing, or the contract is in writing, it ought to be produced.

Mr. Boles: It is produced.

Mr. Machen: Then the witness ought not to be examined as to its contents.

Q. Does John W. Obuck handle bituminous coal? A. I think not.

Q. Is there anything in this lease that would cause
446 you to believe that he could not handle bituminous coal?

Mr. Machen: I object to that.

Q. Answer. A. What is the question?

Q. (Question read). In these bins? A. No; he could handle anything that would go into the bins; he could handle bituminous coal, sand or gravel or anything that was dumped into them.

Q. Has the twelfth clause of that lease to John W. Obuck, dated November 29th, 1911, been stricken out?
447 A. It has been eliminated by consent of the party.

Mr. Machen: When?

Q. Did you ever follow the observance of it? A. Never.

Q. Now, reference was made yesterday by Mr. Gordon to the thirty day termination clause, and I think this morning you testified about certain portions of these 4,000 leases you have covering all kinds of property were made upon terminable upon short notice. Just
448 tell us the facts about those leases; what is your general practice about the termination of leases of property? A. It is our almost invariable practice to make our leases subject to a short terminating notice of anywhere from five days to six months.

Q. And what is the reason for that? A. The sole reason for that is to enable the Railroad Company to recover possession of the property in case we required it for railroad purposes. All the land which we own adjoining our right of way was acquired for or in con-

nection with the railroad use, and it will be devoted to 449
the railroad use at some time. If it is not devoted to railroad use at the present time, we lease it, but reserve this right of termination so as to recover the property when we do need it. The practice has become a fixed one because of two experiences that we had, one about six years ago, and one last year. We leased a piece of land some years ago to the Bethlehem City Water Company for ninety-nine years without the right of termination, and at the time the lease was made and for years thereafter it did not appear that we would 450
ever want that property, but one day we developed plans for what we called the Calypso Island Yard at Behhlehem, and required the property for entrance to the yard. It cost us $35,000 to get rid of that lease. We had another lease at Johnston Avenue, Jersey City, to the Hermann Lumber Company, which was terminable on a year's notice. When the Pennsylvania Railroad Company required us to vacate their Jersey City terminal we made a contract with the Central Railroad, and in connection with the use of the Central Railroad 451
terminal we needed this land that was leased to the Hermann Lumber Company for a coach yard. We tried to get them to vacate on shorter notice than a year and they refused, and as a result of their refusal to vacate we were delayed in getting into the Jersey City terminal of the Jersey Central Railroad for almost a year. That happened two years ago and as a result of those two experiences we have had for many years and now have a fixed policy of reserving a short termination notice, so that we can recover possession of all of this 452
property when and as we need it for railroad purposes.

Mr. Gordon: This second incident was only two years ago?

The Witness: The second incident arose in 1911; the latter part of 1911.

Q. You have just had another recent instance in connection with the Greenville Coal & Ice Company, haven't you? A. That is another case where they have

453 a lease which is practically unterminable by us under its terms, and we cannot get them out at any price.

Q. Was the termination clause put in this lease to John W. Obuck or any of the leases referred to in here, or any of the leases mentioned in the petition, or any other leases that you have in your possession, because of any relation of this railroad to the coal traffic that moved over it? A. None at all.

Q. And the sole reason why you put this thirty day termination clause is the reason you gave? A. It is.

454 Q. And that is the sole reason that actuated you, both as to these leases and does actuate you with the leases that you make now? A. It is.

Q. Do you ever actually ascertain or try to ascertain how or in what manner the lessee is conducting his business? A. No.

Q. Do you ascertain what sort of material he is handling on the premises? A. Not as a matter of course in making the lease, no.

Q. How about after the lease is executed and made? A. Except in so far as it may be necessary to define the

455 use of the property.

Q. Explain that in detail; don't let us have any generalization about that? A. Our leases provide that tenant shall not use or occupy the property for any other than a specific purpose. We limit him to that purpose. If he rents it as a site for an ice house it has got to be a site for an ice house and cannot be changed into an apartment house or a chicken yard, and if a farm it has got to be used for a farm, and in order to put that in I find out what business he is in, but what

456 amount of business he actually does I don't care.

Q. But if you find it is to be used as a coal yard, do you ascertain how he buys his coal? A. Never.

Q. Have you ever? A. Never, except he may have incidentally mentioned it to me.

Q. Such as who? A. I learned in the Yates-Lehigh case, where the tenant got his coal.

Q. But you have no duty to ascertain from whom these men buy the coal? A. No.

Q. Or whether it moves in over the Lehigh Valley or any other railroad? A. No. 457

Q. And you never did so ascertain as a matter of duty or as a matter of course in your department? A. Never.

Q. Have you ever terminated any of these leases at the request of any officer of any coal company? A. Never.

Q. Or at the request of the coal freight agent of the Lehigh Valley Railroad Company? A. I do not recall any such case.

Q. Have you ever been requested by anyone to terminate one of these leases because the lessee had not purchased his goods from the Lehigh Valley Coal Company or from Coxe Brothers or from any other coal company? A. Never. 458

Q. Or because he had not shipped his property over the Lehigh Valley Railroad Company? A. Never.

Q. The second lease referred to is that of March 2nd, 1911, from Marcus E. Good to be used as a coal trestle and site for office; has the so-called shipping clause been eliminated from that lease? A. It has.

Q. Was the rental originally fixed, or fixed at any time, in view of the existence of that clause? A. It was not. 459

Q. Was the termination clause, that is, the fifth clause, made on short notice because of the fact that the property was to be used as a coal trestle? A. It was not.

Q. As one of the parties that signed this lease, do you consider that he is restricted to the use of that trestle for anthracite coal? A. Not for anthracite coal, no.

Q. Or do you consider that he is obliged to buy his coal from any party? A. No. 460

Mr. Machen: Objected to.

Q. Do you consider he is obliged to ship it over any railroad? A. No.

Mr. Machen: Objected to.

Q. Any particular railroad? A. No.

Mr. Machen: Objected to.

461 Q. Is that your personal signature on that lease? (Handing witness paper). A. It is.

Q. Is that your personal signature on the lease to John W. Obuck? A. It is my signature as an officer of the landlord.

Q. But you signed it personally? A. As an officer of the landlord corporation.

Q. The third lease is that to Edgar J. Lumley, October 17th, 1907, to be used as a coal, ice and lumber yard, terminable on ninety days' notice. Has the
462 eleventh clause been eliminated from that lease, which was the so-called shipping clause? A. It has been eliminated by consent of the parties.

Q. And do the same observations apply in respect of this lease which I asked and you answered in respect of the previous lease? A. They do.

Q. The next lease referred to was that to John E. Schuon, August 21st, 1907, the property to be used as a coal trestle and yard, terminable on thirty days' notice. Is that your signature on that lease? (Handing
463 witness paper). A. Yes, sir.

Q. Does it contain a shipping clause? A. It does not.

Q. Is that your signature on the lease to Edgar J. Lumley? A. Yes.

Q. If I ask you the same questions in respect to that lease as I asked you in respect of the Good lease would you give the same answers? A. I would. The Lumley lease I would give the same answers.

Mr. Gordon: Including the shipping clause?

Mr. Boles: The shipping clause is not in that.

464 Q. And you would make the same answer with respect to the Schuon lease, the latter has no shipping clause? A. Yes, yes.

Q. The next lease referred to is that of April 9th, 1907, to John Laubach of Allentown, the property to be used as a lumber yard, office and coal bins, terminable upon thirty days' notice; is that your signature? (Handing witness paper). A. It is.

Q. Does that lease contain a shipping clause? A. It did while it was in effect.

Q. Where is it? A. Oh, I beg your pardon. I thought 465
that was. No, it does not.

Q. Has that lease been cancelled? A. That lease was cancelled on April 1st, 1913.

Q. For what reason? A. I suppose the tenant gave up the property. I don't know without looking up the record.

Q. Can you testify that it was not cancelled because he did not purchase his coal from a particular party or parties? A. Yes; I know it was not cancelled for that reason.

Q. Or because he did not handle anthracite coal at that 466
site? A. It was not cancelled for that reason either.

Q. Would your files show why it was cancelled? A. Oh, yes.

Q. I show you your file; will you please state why the lease was cancelled? A. The lease was cancelled because in March 1913, Laubach and Brothers gave up the property; discontinued the use thereof.

Q. Voluntarily? A. Voluntarily.

Mr. Machen: Does it so show?

Mr. Boles: He says so. I don't care what that 467
shows.

Mr. Machen: He is testifying from that.

Q. Did they give it up voluntarily? A. Yes, they sold it to somebody else.

Q. The next lease referred to was of April 1, 1909 to the Yates-Lehigh Coal Company at Buffalo, the property to be used as a coal trestle and yard; was the rental in that case fixed because of the use to be made of that property as a coal trestle? A. It was not. 468

Q. Is that your signature? (Showing witness paper) A. It is.

Q. Did you intend to restrict the use of the property for anthracite coal purposes? A. We did not intend to and we did not restrict it.

Q. Did he receive bituminous coal there? A. He received bituminous coal there under our consent, which is endorsed on the lease.

469 Q. This lease has a shipping clause, clause eleven; did you ever follow the observance of that clause? A. Never enforced it.

Q. And you don't know then whether he shipped his coal over the Lehigh Valley Railroad or not? A. I do not.

Q. Would it have altered the relations between the parties in any way if he had not? A. Not the slightest.

Q. Has that lease been cancelled? A. That particular lease has been cancelled and a new one made for the same

470 term.

Q. For what reason? A. Because the old lease was mutilated somewhat and in order to eliminate the shipping clause and to get a new lease on our present standard form.

Q. It has not any shipping clause in it? A. No shipping clause in it.

Q. Did the thirty day termination clause in this lease have any relation to the business to be done by the lessee? A. Not the slightest.

Q. The next lease referred to is that of Hamilton Farn-

471 ham, August 8th, 1910, the property to be used for coal bins, terminable upon three months notice. Is that your signature on this lease? (Handing witness paper) A. it is.

Q. Did the rental fixed in that case have any relation to the business to be done by the lessee? A. None.

Q. Did the termination clause have any such relation? A. No.

Q. Has that lease since been cancelled? A. It has.

Q. For what reason? A. He died.

472 Q. The next lease referred to is that of March 17th, 1908, to C. M. Jennings and Arthur T. Dunn, the property to be used as a site for a coal trestle, ice house and yard, terminable upon thirty days notice. Is that your personal signature on that lease? (Showing witness paper) A. It is.

Q. Has the shipping clause in that lease been eliminated? A. It has.

Q. Did the rate of rental fixed have any relation to the business to be done by the Lessee? A. None.

Q. Did the termination clause have any such relation? 473
A. No, sir.

Mr. Macken: Of course, it is understood that my objection as to the admission of parole evidence to contradict the lease goes to all such testimony.

Q. The next lease referred to is that of July 15th, 1911, to H. L. Peckham and J. W. Morgan, trading as Peckham & Morgan, the property to be used as a site for a coal yard, terminable upon thirty days notice. Is that your personal signature on that lease? A. (Showing 474
witness paper) A. It is.

Q. Has the so-called shipping clause been eliminated from that lease? A. It has been eliminated by consent of the party.

Mr. Macken: When?
Mr. Boles: April 14th, 1914.

Q. When did you begin to eliminate shipping clauses from the 4,000 leases, or that part of the 4,000 leases which had such shipping clauses in? A. In the early part 475
of 1914.

Q. 1914? A. Yes.

Q. That is this year? A. That is this year.

Q. That is following the advice that I gave you? A. It is.

Q. And you carried it through as speedily as possible? A. As rapidly as practicable.

Q. The rate of rental herein fixed and the termination clause, did they have any relation to the character of business to be done by the Lessee? A. Absolutely 476
none.

Q. The next lease referred to is that of August 1, 1893, to the Greenville Coal & Ice Company; have you considered or in any way acted upon this lease as if the rate of rental and the shipping clause therein had any relation to the character of business done by the lessee? A. I have not.

Q. Have you endeavored to eliminate the shipping clause from this lease? A. I have.

477 Q. And did you meet with success? A. The tenant absolutely refused to change any of the terms or provisions of the lease. It is a long term lease.

Q. Under what circumstances is it terminable by the Lehigh Valley Railroad Company? A. It is terminable by the lessor on six months notice only in case the lessor shall require the premises for other purposes of use than that carried on by the tenant under the lease, and it provides further on that the premises are to be used for the purpose of carrying on the business of
478 dealing in coal, feed, grain and general merchandise.

Q. There is a covenant in there about the reduction of rental from $1,500 to $1,200 in case freight bills exceed a particular amount; have you ever had occasion to observe that covenant? A. Never.

Q. And it is not observed? A. I have never had occasion. I find from my records that in one year, 1896, the rental was fixed at $1,200, in accordance with that provision.

Q. That was three years after the lease was made? A. Three years after the lease was made, but never
479 since that time.

Q. And since that time they have always paid $1,500 a year? A. They are paying that now and I consider that provision to be applicable only to the first five year term.

Q. The next lease referred to is that of July 26th, 1910, to William A. Pinto Company, the property to be used as a site for coal yard, office, scales and stables, terminable upon thirty days' notice; is that your personal signature on that lease (showing witness paper)?
480 A. It is.

Q. And did the rate of rental and the termination clause have any relation to the character of business to be done by the lessee? A. None whatsoever.

Q. Has that lease been cancelled? A. It has.

Q. Under what date? A. March 1, 1913, the tenant voluntarily gave up the premises; went out of business.

Q. The next lease referred to is that of the Wertheim Coal & Coke Company, dated June 12th, 1906, and the

supplemental lease to them—to the same firm—dated April 30th, 1908; those leases contained so-called shipping clauses? A. They did. 481

Q. Do you know or not as a matter of fact whether those clauses have been observed? A. They have not.

Q. And do you get that information because of the particular investigation that has been made about this lease on account of the suit that firm brought against the Lehigh Valley Railroad Company before the Interstate Commerce Commission? A. I made it on request of counsel.

Q. And in addition to the $1 rental stated in the lease, what consideration did the Lehigh Valley Railroad Company also receive for the making of this lease? A. In addition to the $1 rental the tenant pays taxes on a piece of land; these taxes amount to nearly $1,000 a year. In addition to that the tenant is obliged under the lease to construct coal trestles and appurtenances on the land at a cost of not less than $35,000. The tenant in fact has constructed upon the land a coal trestle, office building, stables and appurtenances at a cost which the tenant claims to have been something over $112,000. 482 483

Q. Has he made that claim to you personally? A. He has made that claim to the Railroad Company; not to me personally.

Q. In writing? A. Yes. The improvements were valued by the chief engineer of the Railroad Company in March, 1913, and he valued them at a reproductive value of $66,717, with a present value of $35,222. Under the terms of the leases at the expiration thereof all these improvements revert to the landlord without payment. 484

Q. And when is the normal expiration of the lease? A. The lease of 1906 was made for 15 years from November 1st, 1906. It will, therefore, expire on November 1st, 1921.

Q. When was the 1908 lease made? A. The 1908 lease was made for a term of 13 years and 6 months from the first day of May, 1908, which would bring it to the same expiration period.

485 Q. At that time these improvements valued anywhere from $66,000 to $112,000 revert to the Lehigh Valley Railroad Company? A. They do.

Q. And are you familiar with the character of them; have you seen them? A. Yes.

Q. Are they in a good state of preservation? A. It is a very large coal trestle in a fairly good state of preservation.

Q. Did you prepare a statement showing the amount of tonnage which these leases attempt to oblige the
486 Wertheim Coal & Coke Company to ship over the Lehigh Valley Railroad year by year since November, 1906, and the amount which they have actually shipped? A. I have.

Q. Is that it? (Showing witness paper) A. Yes.

Q. Is that a correct statement? A. Correct statement taken from the records of my office.

Mr. Boles: I offer this paper marked for identification as **Lehigh Valley Railroad Company Exhibit No. 1.**

487 Marked **Lehigh Valley Railroad Company Exhibit No. 1.**

Q. Have you been advised by counsel that you do not have the right to terminate those leases because of the non-observance of the shipping clauses? A. Well, I don't know that I have been advised by counsel. I can say we have not terminated the leases by reason of a non-observance of the shipping clauses, although there has been a default in that clause for five years.

488 Mr. Boles: These leases are really a lease and a supplement; they cover two pieces of property adjoining each other; two pieces of property at Grand Street and Pacific Avenue, Jersey City.

Q. The next lease referred to was that of August 29th, 1905, to Marvin Dodd and John J. Voorhees of Newark, New Jersey, the property to be used for purposes of a coal storage, terminable upon thirty days notice; does that lease contain a shipping clause? A. It does not.

Q. Did it ever? A. It never did.

Q. Did the rate of rental therein charged and the termination clause have any relation to the character of business to be done by the Lessee? A. None whatsoever. 489

Q. Did you intend the storage of coal there to embrace any coal, anthracite or bituminous? A. Any kind of coal.

Q. Has that lease since been cancelled and if so, when and why? A. That lease was cancelled on October 1, 1913; it was made in August, 1905, and it covers a strip of land at the Hamburg Place yard in Newark, and the land itself is along the slope of the embankment. Our railroad at that point is about sixteen feet above the surface of the ground, and when we made the original lease because of the possibility of a strike at the coal mines, he wanted a place to store coal so as to have a supply on hand, and he suggested to me that he could use the slope of the embankment by constructing a board fence around it and dumping his coal from the cars onto that embankment. That appealed to me because it did two things, it prevented the embankment washing down with the rains—he put a board floor on it—and it also prevented weeds growing on the embankment, thereby reducing fire danger, and we granted him a lease for a term of one year at a rental of $10. Now, in my testimony of yesterday I gave the reproductive value of that land and the rental of $10 may seem disproportionate to that basic or reproductive value. The reason for it is that the land as land has a high value, but the land for rental purposes taking into consideration the circumstances and conditions surrounding it, the nature of it, has no high rental value. In fact, it hardly has any because the tenant in order to use the land had to build a fence around the property. 490 491 492

Q. The next lease referred to is that of December 1, 1903, to Patrick Convery of Perth Amboy, the property to be used as a coal trestle, and the lease is terminable upon 30 days' notice. Does that lease contain a shipping clause? A. It does not.

Q. Or does the rental therein fixed have any relation to the character of the business to be done by the Lessee? A. It does not.

Q. You have not so construed the lease? A. I did not.

Q. The lease to Patrick Convery provides for a rental

493 of 10 cents a ton for every ton of coal received, to be paid on the first days of February, May, August and November, and providing for a minimum rental of $200. Do you know what he has actually paid? A. For the last six years he has actually paid nearly $400 a year.

Q. You are still collecting on the 10 cent basis? A. We are still collecting on the 10 cent basis.

Q. And how do you ascertain the coal received? A. The tenant makes a report and our agent makes a report, each from their own records, and those reports are com-
494 pared and made to agree.

Mr. Gordon: What agent?

The Witness: Our Lehigh Valley Railroad agent at Perth Amboy.

Q. The freight agent? A. I don't know whether he is the freight agent or what his title is.

Q. The station agent? A. Yes; it is ordinarily the station agent, yes.

Q. And is the 10 cents a ton collected irrespective of
495 the points fr which the coal is shipped? A. Absolutely.

Q. And irrespective of whether it is anthracite or bituminous? A. When dumped into the trestle he is charged 10 cents a ton.

Q. And irrespective of whether it is shipped over the Lehigh Valley Railroad or not? A. Absolutely.

Q. The next lease referred to is that of March 24, 1905, to George W. Hawk, Phillipsburg, the property to be used as a coal trestle, office and scale house, wood and wagon shed. The lease is terminable upon thirty days'
496 notice. Does that lease contain a shipping clause, or did it contain a shipping clause? A. It did not.

Q. Have you construed that lease as involving any relation between the rate of rental and the character of business done by the lessee? A. I did not.

Q. Has that lease been cancelled, and if so, when and why? A. It was cancelled on August 1, 1913, and a new lease made to Hawk on our present standard form at an increased rental.

Q. Is was then cancelled because you did demand a higher rental? A. Yes.

Q. Does the new lease have a shipping clause? A. 497
No.

Q. Does the new lease provide the use to be made of the premises? A. Oh, yes; it has our regular clause in it that it shall not be used for any other purpose than as a——

Q. What? A. I don't know. I have sent for the lease. The new lease is dated July 22, 1913. Is at an annual rental of 10 cents a ton with a minimum of $200 a year and provides that the premises shall be used for no other purpose than as a coal trestle, office, scale, wood 498
and wagon shed.

Q. Did you sign that personally? A. I did. It does not contain a shipping clause. It is terminable on 30 days' notice.

Q. And the rental applies irrespective of the place from which coal was shipped and from whom he may buy it? A. Absolutely.

Q. And whether or not it is shipped over the Lehigh Valley Railroad? A. Absolutely.

Q. Has the termination clause in that lease any relation to the character of business to be done by the 499
lessee? A. None whatsoever.

Q. The next lease referred to is that of September 29, 1910, to James Fleming, Phillipsburg, the property to be used as a coal trestle. The lease terminable upon 30 days' notice; is that your signature? (Showing witness paper). A. That is.

Q. Has the shipping clause in that lease been eliminated? A. It has by consent of the party.

Q. And did you fix the rate of rental, or the time within which it could be terminated as having any re- 500
lation to the character of the business done by the lessee? A. I did not.

Q. The next lease referred to is that of June 20th, 1907, to the Lehigh Valley Coal Company, rental $1,600 for property at Jersey City, the property to be used as coal pockets and yard, the lease terminable on sixty days' notice. Is that your signature? (Showing witness paper). A. Yes.

501 Q. Does that lease have a shipping clause? A. It does not.

Q. Did the rate of rental and the termination clause have any relation to the character of business done by the lessee? A. It did not.

Q. Has that lease since been cancelled? If so, why and when. A. Cancelled on March 1, 1912, because I raised the rent on the Coal Company and made a new lease.

Q. And is the new lease the lease of February 23,
502 1912? A. It is.

Q. Is that your signature on that lease? (Showing witness paper). A. Yes, sir.

Q. Did the new lease contain a shipping clause? A. It did.

Q. Has it been eliminated? A. It has, by consent of the parties.

Q. What is the rate of rental? A. The rental under this lease is $2,872 a year; payable monthly in advance, together with all taxes and assessments against the land, and against the improvements; together also with
503 the water rent and together with an obligation on the part of the tenant not only to keep the property in good order, but also to make all repairs and renewals and betterments.

Q. Has the sixth clause, which is the termination clause upon sixty days' notice, any relation to the character of business done by the lessee? A. None whatsoever.

Q. Has the amount of rental? A. None whatsoever.

Q. Does that lease provide that the property shall not
504 be sublet without the consent of the lessor? A. It does.

Q. Has it been sublet with the consent of the lessor? A. It has.

Q. The next lease referred to is that of June 20th, 1907, Lehigh Valley Coal Company, of the property at South Plainfield, at the rate of $7,500, the lease terminable sixty days' notice, the property to be used as a coal storage plant; is that your signature? (Showing witness paper). A. Yes.

Q. Did that lease contain a shipping clause? A. It did not. 505

Q. Did the rate of rental and the termination clause have any relation to the character of business to be done by the lessee? A. It did not.

Q. Has that lease since been cancelled? A. It has.

Q. When? A. March 1, 1912.

Q. Why? A. We made a new lease with the tenant on our present standard form at an increased rental.

Q. Is that your signature on the new lease? (Showing witness paper). A. That is. 506

Q. What is the rate of rental? A. The rate of rental is $10,247 a year, payable monthly in advance, together with all taxes and assessments against the land, and against the improvements, together with the water rent, together with the obligation not only to keep the property in good order but to make repairs, renewals and betterments.

Mr. Gordon: To identify the document, is that the lease of February 23rd, 1912?

Mr. Boles: Yes. 507

Q. Did that lease contain a shipping clause? A. It did.

Q. Has it been eliminated? A. It has been eliminated by consent of the parties.

Q. Does the rate of rental or the termination have any relation to the character of business to be done by the lessee? A. It does not.

Q. The next lease referred to is that of June 20th, 1907, to the Lehigh Valley Coal Company of the property at Rochester, to be used as a coal trestle and yard, rental $1,600 a year, terminable upon sixty days' notice; is that your signature on that lease? (Showing witness paper). A. It is. 508

Q. Did that lease contain a shipping clause? A. It did not.

Q. Did the termination clause and rate of rental have any relation to the character of business to be done by the lessee? A. None whatever.

509 Q. Has that lease been cancelled, and if so, when and why? A. It was cancelled on March 1, 1912, because I raised the rental on the tenant, and made a new lease to cover

Q. Is this lease of February 23, 1912, the new lease? (Showing witness paper). A. It is.

Q. Is that your signature thereon? A. It is.

Q. What is the rate of rental? A. The annual rental is $3,604, payable monthly in advance, together with all taxes and assessments against the land and against
510 the improvements, together with the water rent, together with an obligation on the tenant not only to keep the property in good order and repair, but also to make all repairs, renewals and betterments required thereto.

Q. Did that lease contain a shipping clause? A. It did.

Q. Has it since been eliminated? A. It has.

Q. Does the rate of rental or termination clause herein have any relation to the character of business done by the lessee? A. It does not.

511 Q. The next lease referred to is that of February 23rd, 1912, to the Lehigh Valley Coal Company for property at Irvington; is that the lease and is that your signature thereon? (Showing witness paper). A. Yes, sir.

Q. What is the rate of rental? A. Annual rental $1,535, payable in advance monthly, together with the taxes and assessments against the land and improvements, together with water rent, together with the obligation in addition to keep the property in good order and repair, and to make all repairs, renewals or better-
512 ments required thereto.

Q. Does the rate of rental or the termination clause herein have any reference to the character of business done by the lessee? A. It does not.

Q. Did that lease contain a shipping clause? A. It did.

Q. Has it since been eliminated? A. It has, by consent of the parties.

Q. The next lease referred to is that of February 23, 1912, to the Lehigh Valley Coal Company, for property

at Newark, New Jersey; is that the lease and is that your signature thereon? (Showing witness paper). A. It is. 513

Q. And what is the rate of rental? A. The annual rental $9,055, payable monthly in advance, together with all taxes and assessments against the land and against the improvements, together with the water rent, in addition to which the tenant is obliged to make all repairs, renewals or betterments to the premises.

Q. Did that lease contain a shipping clause? A. It did.

Q. Has it been eliminated? A. It has, by consent of the parties. 514

Q. What is—does the rate of rental or the termination clause therein have any relation to the character of business done by the lessee? A. It does not.

Q. The next lease referred to is that of October 25, 1897, to Daniel Leeds Miller, property at Elizabeth; has that lease been cancelled? A. It has.

Q. When? A. That lease was cancelled on October 31, 1913.

Q. Why? A. I don't know. I cannot tell without referring to my records. 515

Q. In that lease is contained a clause to the effect that the lessee shall not handle or sell any other coal except that mined by the Lehigh Valley Coal Company, etc., or by other operators whose collieries are located upon the lands of the Lehigh Valley Railroad, etc. Since you have been Land and Tax Agent of the Lehigh Valley Railroad Company have you endeavored to ascertain whether that covenant was observed by the lessee? A. I have not.

Q. For what reason? A. Because I construed the covenant as meaningless and not in force. 516

Q. And how long have you had jurisdiction over the matter of noting the observance of leases by tenants? A. Since May 1, 1904.

Q. And during all of that time your answer applies? A. Yes.

Q. Have you since made a new lease with Daniel Leeds Miller in respect to the same property? A. I have.

517 Q. I show you a lease dated January 9th, 1914, to Daniel Leeds Miller, covering property at Elizabeth at a rental of $100, the property to be used as a site for a trestle, office, scales and barn, terminable on ninety days' notice; is that your signature? (Showing witness paper). A. Yes.

Q. And is that the new lease referred to? A. Yes.

Q. Does that lease contain a shipping clause? A. It does not.

Q. Does it make any mention of coal? A. It does not.

518 Q. Each of the leases dated February 27, 1912, were assigned to the Lehigh Valley Coal Sales Company and could only be assigned according to their terms by the written consent of the lessor, is that correct? A. Could only be assigned or sublet according to the terms of the lease.

Q. What is your explanation of the existence of the shipping clause, so-called shipping clause, in these leases which have been shown to have originally contained it?

Mr. Machen: Objected to.

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A. I do not understand the question. You mean as to their force?

Q. No, how did it come in there? A. Why, the shipping clause, or a clause of that nature is contained in many earlier papers, leases, siding agreements made by railroad companies in the earlier days, back in the nineties, and prior thereto. It has survived during the years, but not continuously. In my own department in leases, it would be put into a set of leases for six months or a year, and then as that edition ran out they would re-

520 print the lease without the shipping clause in, it would be left out for a while, and then for some reason or other it would go in again for a while. It was not used continuously, nor was there any effort made to put it into every lease with every coal dealer or with every commercial shipper. It was inserted into leases of houses at Delano where we owned 180 houses which we leased to our engineers and our firemen and our conductors. It was put into some of those leases; no meaning or force; it was left out of some.

Q. Now, I show you a lease dated April 28th, 1884, 521
to William A. Seibert and John F. Unger of property to be used as a site for manufacturing and cutting slate at Slatington, Pennsylvania; did that lease contain the shipping clause? A. It does.

Q. And will you read it? A. (Reading):

"The parties of the second part for themselves, their representators and administrators further agree that one of the conditions of this lease and its continuation for the term mentioned is that they, the parties of the second part, will forthwith 522
erect and during the continuance of this lease will maintain upon the premises hereby demised, their slate manufactories, and that all the manufactures and products from any factories, works or operations upon the said premises and all freight to said factories, works or operations shall be shipped and transported over and by the railroad and branches of the Lehigh Valley Railroad Company aforesaid, during the continuance of this lease, so far as they, the said 523
parties of the second part, can control the shipping of the same, and that they will endeavor to control all said shipments for that purpose."

Q. And from what you have seen of leases in your department made that early or since, can you state that the shipping clause has been used indiscriminately, irrespective of the use to be made of the proprty? A. I can.

Q. And would you say it was more generally found in contracts or leases of property used for other purposes than those of a coal yard? A. It is in greater proportion 524
in leases of property to other shippers than coal shippers than it is in coal shippers.

Q. And irrespective of the use of the property you never ascertained whether it was observed or not by the tenant? A. I have never ascertained that.

Q. Does that apply ever since you have been Land and Tax Agent, that is, since March 1, 1904? A. Since May 1st, 1904.

525 Q. The Government has referred to leases of property at Jersey City to be used as sites for coal trestles, which leases contain a shipping clause; are you familiar with any other leases we have at that point which do not or do contain shipping clauses? A. Yes, sir.

Q. Can you name some of them? A. We have the following leases at Jersey City which contain the shipping clauses or the shipping clauses were within these leases within the last six months: the tenants are the General Baking Company, in the bakery business; C. Heidt &
526 Son, in the cooperage business, and Van Keuren & Sons, contractors; United States Metal & Manufacturing Company, scrap iron dealers; Bishop & Babcock, manufacturers of pump and iron work or something of that sort; United States Express Company, express business; William N. Connor, poultry accessories; Henry Kohl Company, groceries; Dixon Crucible Company, manufacturers of graphite products; John Buckley, a blacksmith; J. S. Boyle, manufacturer of paper boards; the Cork Insulation Company, manufacturers of cork insulation products, and the Eclipse Lighterage & Transportation Com-
527 pany, manufacturers of something.

Q. You have referred to thirteen industries; that is, you have referred to thirteen business concerns who are not engaged or connected in any way with the anthracite coal business against the two leases, or, rather, the two concerns in Jersey City who were or are connected with the anthracite business. Now, would you not say that about that same relative situation exists throughout our land? A. I would not say the proportion was thirteen to two, but I would say that on January 1st, 1913, or thereabouts we had more leases in effect with a shipping clause
528 in with tenants who were not engaged in the coal-business than we did with tenants who were engaged in the coal business.

Q. And can you make a little more definite the term "More"; would you say two to one or three to one? A. Yes, I think I can say on or about that date we had about 430 leases in effect with the shipping clause in out of a grand total of nearly 4,000; of those 430 about 125 were with coal dealers the remainder were with other than coal dealers.

Q. Printed forms have been shown to you both yesterday and to-day containing the shipping clause and have also been referred to by the Government; is that the same form that you used for all leases during the period of which you actually had it in years irrespective of what the property was to be used for? A. Yes; while that edition lasted we used it for everything. 529

Q. And can you say you drew up more leases for property where the site to be used for other than the coal business than you did for coal business on that form? A. Oh, undoubtedly.

Q. Does your new form contain a shipping clause? A. It does not. 530

Q. Have you seen leases made by other railroads to shippers or tenants? A. I have.

Q. And have you seen any with shipping clauses? A. Oh, yes.

Q. And do you know or can you say from your general knowledge of the railroad business that in the past it has been customary, or that the shipping clauses have generally been inserted in leases of property irrespective of the use to be made of the property? A. I think it has been the universal practice. 531

Q. Will you state some of the matters you take into consideration in fixing the rental of property? A. Well, in fixing a rental of property for lease to a shipper, or to any individual, we do not fix an arbitrary percentage, such as 4 or 6 or 8 per cent on the assessed value, or on any other value of the land. We try to take into consideration all the circumstances and all the conditions surrounding each individual lease. Now, as to these circumstances and conditions there would be a number of them; the first would be the condition of the land—I referred a little while ago to the Van Name lease at Newark, where we leased the slope of an embankment. The fact that the land to be leased was the slope of an embankment, or the fact that it was swamp land which had to be filled in by the tenant, as frequently happens, would be a factor in fixing the rental of the land. The location of the land with respect to the tenant is a factor; for instance, we have a lease at Cort- 532

533 land, referred to this morning, to Peckham & Morgan; Peckham & Morgan own their own coal trestle and in constructing it they built one corner of one of the pockets on our land, and I think a part of their shed is on our land. Now, the land that they actually occupy might have a very high basic or reproductive value, but the rental value of that land to the tenant would be very low, because he could very easily cut down that bin corner of the pocket, or move his shed over a few feet. A great many of our leases and a great many of
534 these coal leases themselves that are enumerated in the Government petition are leases of enroachments of that kind, where a tenant has constructed a fixture on his land and has slopped over on our land to some slight extent. That element is a factor in determining the rental value of the land. The proposed use of the land is a factor. At Athens we have a coal dealer by the name of Kinter, I think it is; we leased him a piece of land upon which he has a part of his coal yard. Not all of it, I believe, and right alongside of the land which
535 we leased him there is another piece of land which we are not using for the time being, which was growing up with weeds every summer The danger of fire was considerable, and Kinter made me a proposition one year to rent that piece of land for $5. Well, it has an intrinsic value which would justify a higher rental than $5, but all he wanted the land for was to cut down the weeds and plant corn so as to reduce the fire danger, not only to himself but to us, and I rented him that land for $5 because I believed that was all the rental value there was in the land. We have a piece of
536 property we bought last year down at Clairmont, containing about ten acres, worth anywhere from $8,000 to $10,000 an acre; we are renting that for $8.33 a month, because the use to which it is put, the only use to which we can put it until we use it ourselves, does not justify a higher rental. Another factor in renting a coal trestle or any other piece of land would be the access to the market. For instance, we have at South Somerville a lease to a man named Van Ness; he pays $10 for a coal trestle. Now, in the report to the Interstate Commerce

Commission the value of that trestle and the value of the land apparently do not justify a $10 rental. Yet, if you go out to South Somerville you will find that there is nothing at South Somerville except the Lehigh Valley Station, and I am not sure there is even a station there; there is absolutely nothing there except the coal trestle and one or two houses. Now, that tenant in order to sell coal has got to drive to Somerville, which is 2½ miles away; he does not do a very large business, and I have tried for ten years, practically ever since I have been with the railroad company, to rent that trestle to someone else who would pay more. I have tried to get the present tenant to pay more. I have been utterly unable to rent it to anyone for more than $10 a year, because when he gets to Somerville he gets on the Central Railroad and gets in competition with the trestles on the Central Railroad and he has got to drive 2½ miles to get there. It is obvious he can only deliver one or two loads a day in Somerville, while the Jersey Central dealer can deliver ten or twelve, and Somerville is the only market, and why there was ever a coal trestle put at Somerville, I don't know; it certainly is not justified economically, and the rental of that property cannot be increased from an economic standpoint. Out at Picton we have a mechanical conveyor, built within recent times. We are renting that for $250 a year. If you take the value of the conveyor, the value of the land, you apparently have an inadequate rental, but if you look into the matter you will find that the plant is a mile from Westfield and two miles from Rahway, that there is no market at Picton for coal of any kind. He has got to go to Westfield; he has got to go to Rahway to sell that coal; he has got to drive these miles. He comes into competition with dealers who are located right in the centre of their market and there is hardly any justification for building the plant at Picton, and there is no way of increasing that man's rental in any way, and the previous tenant for whom the pocket was built, Bitner & Fitzpatrick, went into the coal business there and went into bankruptcy. Another element

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541 in fixing the rental, and a very serious element from my point of view, are the conditions which the Lehigh Valley Railroad Company exacts of its tenants. These conditions are, of course, best expressed in our modern form of lease, in our present standard form of lease. We oblige the tenant to pay taxes on its own property. Now, that may not seem burdensome, but the ordinary tenant who takes a lease of property is not obliged to do any such thing; and we carry this out to the extent that we see that our tenants are assessed for their per-
542 sonal property and that they pay their taxes, because in some jurisdictions they attempt to hold that the tax on personal property is a lien on the land. Now, one of our tenants I have in mind, but I would rather not name him, is litigating his personal property assessment, and it is a burden to him in that respect. If he was an ordinary tenant he probably would not be sued or else he would not pay his taxes. We prohibit the assignment or subrenting of the property. That might be burdensome because a man in business cannot sell his
543 business every day of the week. If he gets a purchaser we might object to the assignment or subleasing of the land, and it might prevent his selling it. That has happened. We restrict the use of it to a certain general use, as a coal business, an ice business, a site for a warehouse. An ordinary tenant of land is not restricted in that way. You take the lease of a piece of land from an individual, you can put up a coal trestle or an apartment house or anything you please. We make the tenant, of course, agree to keep the property in order; we make him agree to abide by the orders of the municipal
544 authority; we make him agree to clean the sidewalks in winter time; we make him agree if he puts a house on our property to paint it and paint it in a color which we demand. We reserve this right to termination on a short notice. That to my mind is a very burdensome proposition, because those of our tenants who are in business must invest a certain sum of money; they must establish themselves and yet they are subject throughout to being put out because we want the property for

our own use. We have had many applicants refuse to take leases subject to the short notice. It is an essentially burdensome proposition from the tenant's point of view. We put into our leases a provision that if the property becomes vacant the term shall expire. That is an extraordinary provision. It does not appear in the ordinary lease between landlord and tenant. We provide that if the land shall be used for any other purpose we have the right of cancellation of the lease, and then, lastly, we put into our leases the most important provision of all perhaps, and that is that the tenant releases the lessor from all injury and destruction by fire or other causes incident to the operation of a railroad. In other words, when we lease a piece of property to a man and he builds a coal trestle on it and a spark from an engine sets fire to that under this provision in the lease he has no redress against us for damages. Now, all of those elements in the lease materially effect the rental which the railroad company can exact. 545 546

Q. Now, as to the restriction of the use of the property; if you have a tenant who, for instance, is going into the warehouse business, and is going to have more or less shipments moved out over the railroad, or moved over the railroad into the warehouse, and at the same time you have an applicant who will give you exactly the same rental and comply with the same conditions, who wants to use the property for something in which we would get no freight one way or the other, which would you select? A. I think the man who was going to give us the freight; that is what we are in business for. 547 548

Q. Now, where you have a piece of property on a slope such as you mentioned out here in New Jersey, and you take $5 or $10 for it, you are just so much to the good, aren't you, on account of your fixed charges? A. Just so much to the good.

Q. And if you did not take it you would be so much to the bad? A. Yes, and it would be a source of expenditure, because we have to cut the weeds on the thing. That is a material consideration in a great many leases, this cutting of weeds.

549 Q. And the reasons I mentioned as to the restrictions you have testified also apply to it, namely, by reentering in case they change the use? A. It does.

Q. Because if you could get another tenant and he is going to ship property over your line he is a better tenant? A. Why, certainly.

Q. Did you prepare at my request a statement showing the leases in existence at various points which originally contained shipping clauses? A. I did.

Q. Or we might say up into the year 1914, that contained shipping clauses? A. Those on or about January
550 1st, 1914, they contained shipping clauses.

Q. And do the items which have a star in front of them there represent the items which are mentioned in the Government petition in this case? A. They are the leases mentioned in the Government's petition.

Q. And opposite each tenant you have shown the nature of the business he transacts? A. I have.

Q. Is that a correct statement? A. A correct statement, made from the records of my office.

551 Mr. Boles: I wish this statement marked for identification as **Lehigh Valley Railroad Company Exhibit No. 2.**

Marked **Lehigh Valley Railroad Company Exhibit No. 2.**

Q. Did you prepare a statement showing the comparative square feet of rentals of land for the various leases which are named in the Government's petition, and also for other tenants which you have at some other points? A. I did.

552 Q. And is that it? (Showing witness paper) A. That is it.

Q. Is that an accurate statement? A. A correct statement made up from the records of my office.

Mr. Boles: I wish this statement marked for identification as **Lehigh Valley Railroad Company Exhibit No. 3.**

Marked **Lehigh Valley Railroad Company Exhibit No. 3.**

Q. The items which contain a star in front of them are the items mentioned in the Government's petition?

A. They are leases mentioned in the Government's peti- 553
tion.

Q. Do you care to amplify in any way the definition of basic value that you gave yesterday? A. Yes, I would like to give a definition of basic value. Basic value of railroad right of way is the present average normal worth of contiguous or neighboring whole tracts of land on either side of said right of way from which is estimated the reproductive cost of severed or assembled parcels required to produce the right of way.

Basic value therefore applies to the value of contig- 554
uous or neighboring lands similar as to general location and character but dissimilar as to shape and specific location necessary for railroad continuity, and dissimilar also in that they are units and not, as in the case of right of way and terminals, an aggregation of units.

Q. Where did you obtain the figures as to reproductive and basic values to which you testified yesterday? A. From the valuation made of the Lehigh Valley Railroad system under the direction of William J. Wilgus.

Q. And as to which he testified with considerable de- 555
tail before the Interstate Commerce Commission in Docket No. 4,914? A. I so understand it.

Q. Is the definition of basic value there given the one which he has formulated as applicable to his figures? A. It is.

Re-Direct-Examination by Mr. Machen:

Q. Mr. Foster, who is your immediate superior officer; are you responsible to the president directly? A. No, I am responsible to John A. Middleton, vice-president.

Q. Have you been responsible to him throughout your 556
tenure of office? A. No.

Q. Are you always responsible to the first vice-president, or to whom are you responsible? A. I am now responsible to the vice-president. Prior to October 11th, 1909, I was responsible to the then general solicitor of the Railroad Company.

Q. And not to any vice-president? A. No. When I came with the Railroad Company—the real estate department from almost the very beginning—up to Oc-

557 tober, 1909, the real estate department reported to the general solicitor of the Railway Company.

Q. Who was he? A. James F. Schapperkotter was the man to whom I reported. After October, 1909, the real estate department was placed under the jurisdiction of the first-vice-president of the Railroad.

Q. And since that time he has been Mr. Middleton? A. At that time he was Mr. Middleton and since that time he was Mr. Middleton.

Q. Prior to that time you had nothing to do with Mr.
558 Middleton? A. Prior to that time I had nothing to do with Mr. Middleton.

Q. Did you find the termination clause an inheritance in your office just as you found the shipping clause? A. Oh, yes.

Q. And you found the one was illegal and had better be dropped and the other one beneficial and had better be retained? A. No, I didn't think anything of that sort. I realized the necessity for the retention of a terminating clause. Realized it very forcibly, because
559 I came with the railroad company in 1904, and it was in 1905 when this instance of the Bethlehem City Water Company came up, which cost the railroad company $35,000 to get rid of that lease. That impressed it on my mind very forcibly. The shipping clause I gave very little thought to one way or the other. If I did think of it I never considered it worth the paper it was written on.

Q. Although you preferred shippers, other things being equal, who were engaged in a business which would bring tonnage to the railroad? A. Other things being
560 equal, all conditions being equal, I certainly preferred a tenant who would ship over the line of the railroad company, but we did not in fixing that rental or in making that lease consider as an element of the lease the shipment over the Railroad Company's line, and so far as I know I never have.

Q. You only consider this matter of shipment over the railroad when your mind on all other questions is in a situation of exact equilibrium? A. No, I don't

think that I ever was in that condition. I would consider it only in case I had two firms of the same standing, willing to pay the same rent, willing to accept the same terms under our lease. If all of those conditions were equal I would take the man who was going to put up a building or do business over the line in preference to the man who wanted to use it for a farm, or other purpose, which did not involve shipments over the railroad. 561

Q. But if there is any difference in rental, if a man who would not ship over the railroad was willing to pay a little bit more? A. He would get the property. 562

Q. Even if it was a very small amount? A. Well, yes, of course, a matter of 10 cents or something of that sort—but if it was an amount worth considering, yes; otherwise I would probably go to the other fellow and tell him I had a better offer.

Q. Suppose you had done that and you had two offers, one of them was $50 more than the other one? A. I would take the higher one.

Q. Suppose it was $25 more? A. I don't know. Of course, I cannot consider an imaginary case. I would have to know whether I had other land, I could rent to the shipper; I would have to know the circumstances and location and all these elements I have mentioned come into it. 563

Q. I understand, but I am speaking now simply on this one question of the use to which the property was to be put? A. If all the elements were absolutely alike and the man who did not want the property for shipping purposes offered me a substantially larger amount than the man who did, I would probably prefer the man who offered me more money. 564

Q. And the fact that you do consider the use to which the property is to be put and are very particular about that is one of the reasons which you assigned in your examination by Mr. Boles why the railroad cannot get as good rental as perhaps the inherent value of the land might justify? A. Yes; I forgot to mention the thing that was in my mind in connection with it and that it

565 that a lumber man has to use the property for storage of lumber, but lumber necessarily cannot be piled high in the air; he has to have a horizontal area, and a lumber man cannot afford to pay a high rental on the value of the land to store lumber. That would be one of the uses of the land.

Q. As I understood you the reason, and the sole reason, for the retention of the terminating clause in your lease is that the railroad may want the property for railway purposes? A. Yes.

566 Q. And that, therefore, you are forced to sacrifice a high rental sometimes in order to retain the use of the property at any time that the railroad may find it necessary to make use of it for its— A. No, I don't think the railroad is forced to sacrifice high rentals for that reason.

Q. You mentioned that as one— A. That is one of the reasons that might tend to make a lower rental.

Q. Which is the answer, as you said, from your examination by Mr. Boles? A. Yes.

567 Q. The tenant would not make improvements, he would not care as much if his tenure is uncertain? A. Yes.

Q. That stands to reason? A. Yes. There is no sacrifice because we get more than we give. We get the right to take back our land which is worth something.

Q. Of course, but I mean to say that the terminating clause, or, rather, the power of the terminating clause, to use the property for railroad purposes at any time on short notice is worth money to the railroad? A. Yes; it is an absolute requirement of the Railroad Company,

568 and I don't know as to how much it is worth to the Railroad Company; it is an advantage to the Railroad Company.

Q. I don't say it is worth money; it is of pecuniary value to the railroad? A. Yes; it would have been worth $35,000 to it at Bethlehem.

Q. Now, this terminating clause gives the Railroad Company the right to terminate every lease which you make on thirty days' notice, does it? A. It varies in different leases.

Q. Usually thirty days? A. Some at five days, some 569
at thirty, some sixty, some ninety, some four months and some a year, and then, of course, these few which are not terminable.

Q. Those are old leases? A. Yes. We haven't made any long term leases in many years.

Q. I understood you to say that practically all of the leases now made had a terminating clause, reserving the right to terminate the lease on very short notice? A. Yes.

Q. And the reason for that is that the Railroad Com- 570
pany may need the property for railroad uses? A. The reason for that is putting the Railroad Company in position to get the property back if we do need it for railroad purposes.

Q. Are there not instances in which the railroad can look ahead a little more than ninety days; they can say that some of this property they certainly will not want for a year or so, can't they? A. We have made two or three mistakes in that way and have leased the property for a year and found we needed it in a month. Take that 571
case at Jersey City.

Q. I understand, but still as a matter of fact you would not ask the Court to believe that the officials of the Railroad Company are so short-sighted that they cannot know for some months—more than thirty days, more than ninety days—whether they are going to need some property at any rate? A. Oh, well, of course, some property. But there are pieces of property which it would not know that it needed to-day which tomorrow we might need very badly. I have been sent out many times over night to buy property which yesterday we did not need 572
and which to-day we decided we needed and bought it tomorrow.

Q. And you will ask the Court to believe that? A. I will ask the Court to believe that. If we find we do need it we can get it.

Mr. Boles: Explain the difficulties which would be involved if that were not the practice.

Mr. Machen: One moment. Let me finish with my examination.

573 Q. Although that is the sole cause for the insertion of this terminating clause—well, is there any instance in which you have confined the terminating clause in terms to cases in which the railroad needs the property for railroad purposes? A. Oh, no. Oh, yes, there are instances.

Q. Produce one? A. Here is one right here. This lease to Daniel Leeds Miller that we cancelled provides that we can only terminate it in case we require the property for our own railroad use. The Wertheim lease
574 does the same thing. The Greenville Coal & Ice Company lease does the same thing. I am not sure about that other one. But we have had a number of leases and have some of them which provides that we can only terminate in case we require the property for our own railroad use, and it is our policy to get away from that phraseology.

Q. Do these leases that contain the terminating clause in this restricted form also contain a shipping clause? A. Well, the three that I have mentioned contained both clauses, but I would not be heard saying that they are
575 the only leases that are in my files.

Q. But they are the only ones that occur to you? A. They are the only ones that occur to me.

Q. The only ones you can remember? A. The only ones I can remember, because they have been impressed on my memory in the last few hours.

Q. Have there ever been any cases in which the terminating clause has been exercised by the railroad and a tenant evicted against his wishes? A. Oh, yes.

Q. I am going to ask you to make a list of those cases
576 in which you have refused absolutely to rent the property to the same tenant? A. Well, it would be very difficult for me to do that. The reason for it in each case was the tenant refused to pay his rent.

Q. The tenant refused to pay the increased rent? A. No, the present rent; he did not pay his rent; he defaulted on the terms of the lease.

Q. It is not necessary under the laws of most states to resort to a terminating clause to get the tenant out if he does not pay his rent? A. It is in Pennsylvania. Peculiarly enough it is.

Q. I rather gather from your having these various 577
lists which Mr. Boles has filed as the Railroad Company's exhibits that you have been preparing for an examination regarding these— A. No, I prepared the list. Mr. Boles told me what he wanted and I made up the list, but I have not prepared.

Q. I don't mean to say—you probably misunderstood me. I simply mean you expected to testify in this case?

Mr. Boles: You sent me a letter about two weeks ago you wanted him here. 578

The Witness: I was told by Mr. Boles I was going to testify in this case last week.

Q. You found the rentals, when you revised them, very much below what they ought to have been, didn't you? A. No, sir. What rentals in the first place?

Q. I though you said there had been a general increase in rentals in 1912, I think it was? A. No, I never said that. Ever since I have been in charge of the real estate department I have realized fully that my salary 579
depended upon the size of my rent roll, and I have been increasing rentals right along to a lot of our tenants. To show that there is no discrimination in the matter we raised the United States Express Company in Wilkes-Barre in 1908, from $1 to $25, and the howl they raised was heard from here to the New York office and they went to the President's office to protest against the increased rent.

Mr. Gordon: You have been careful to raise the rent whenever it would justify it? 580

The Witness: I have continually raised rents all over the land for the last ten years. I have district men and they have standing orders, and I have conferences with them every year, and in every conference I have had one of the subjects of discussion has been the question of getting more money from the properties, and there has been a constant effort for ten years to raise the rent of all tenants indiscriminately whether they are residents or farmers or shippers or coal

581 dealers or anything else, and I am glad to say that I have been somewhat successful during the ten years and I propose to keep it up.

Q. You have read the petition in this case, I suppose? A. Casually.

Q. You have read the portions which relate to real estate matters? A. Oh, yes.

Q. Now, on pages 48 to 49, we find various cases of leases to the Coal Company as to which you have testi-
582 fied before, and besides the South Plainfield lease we find there Poineer Street, Newark, and Mount Hope Avenue, Rochester lease, and Grand Street and Pacific Avenue Jersey City. Now, in all these cases the rental was raised in 1912, wasn't it? A. Yes.

Q. Now, I want to ask you whether this passage in the answer of the Lehigh Valley Coal Company, page 23, is correct. The answer reads as follows: "It is true that as of March 1st, 1912, the Coal Company increased the rentals to the Lehigh Company, but that was to realize a 4% return upon a new physical valua-
583 tion of said property completed about March 1st, 1912, which showed an increase in the value of said properties beyond that at which they had before that time been held and considered to be worth." Is that true? A. Yes, sir.

Q. Then the amount which the Railroad undertook to realize was 4%? A. The facts stated in the answer are right, the names of the parties are not right. Yes, the rental of these four plants is 4% on a valuation of the property.

584 Q. When the answer states the Coal Company increased the rentals to the Lehigh Company I take it that it means agreed to pay increased rentals to the Lehigh Company; that is my construction? A. That is my interpretation of its meaning.

Mr. Wheaton: Who is the Lehigh Company?

Mr. Machen: The Lehigh Valley Railroad Company.

The Witness: The Lehigh Valley Railroad Company does not pay to the Coal Company.

Q. No, the Coal Company pays to the railroad, and 585
when the answer says that the Coal Company increased the rentals to the Lehigh Company——

Mr. Wheaton: They must mean the Sales Company, Mr. Macken.

Q. It sub-leased to the Sales Company? A. I don't know about that.

Q. Whatever the answer may be the fact is as I understand you that in 1912, that on March 1, 1912, the 586
Lehigh Valley Railroad Company raised the rent on the Lehigh Valley Coal Company of these properties which were about to be sub-leased by the Lehigh Valley Coal Company to the Lehigh Valley Coal Sales Company? A. No, I cannot answer as to that, because I had no knowledge at that time of the property about to be sub-leased to the Sales Company. At the time I fixed the rental I did not know anything about the Sales Company.

Q. Yes, but the Railroad Company raised the rent on the Coal Company? A. There is no doubt about that. 587

Q. And it raised it in order, as it stated in the answer, you say, to realize a 4% return on a new physical valuation of such properties? A. No, that is not our answer.

Q. I know that, but that is the answer of the Coal Company, and I understood you to say that that answer was true? A. That is the fact, yes.

Q. That is a fact, that that was the reason you raised the rent? A. The reason they raised the rent was because the property had increased in value.

Q. And wasn't there at that time a general re-valua- 588
tion of the properties leased by the Railroad Company? A. To other shippers, or to all shippers, or to what?

Q. To the Coal Company at least? A. To the Lehigh Valley Coal Company?

Q. Yes. A. I think we raised all the leases of the Lehigh Valley Coal Company, yes.

Q. Was there any cases in which you reduced the rent for the Lehigh Valley Coal Company at that time? A. I

589 could not say without making a comparison of the previous rentals of all the leases. There are at least four cases where there was apparently no reduction.

RECESS TAKEN UNTIL 2:15 O'CLOCK P. M.

AFTER RECESS.

George H. Foster, recalled.

Re-Direct-Examination Continued by Mr. Machen:

590 Q. Referring now to leases which contained the so-called shipping clause, or routing clause, in such form as the following: "In consideration of the low rental herein reserved the said Lessee covenants and agrees to ship, or cause to be shipped, over the railroad systems of the Lehigh Valley Railroad and over connecting and forwarding lines preferred by it" and so forth "all freight, the shipment of which the said Lessee can control or influence"—I want to ask you again whether your testimony was that notwithstanding the language of
591 those leases the rental was not any the lower than it otherwise would have been because of the insertion of such a covenant? A. Your understanding is correct.

Q. Your contention is then that the lease is incorrect in that recital that the low rental is in consideration of the covenant referred to? A. That clause in the lease is meaningless in that respect, and the same language is used in the preceding clause.

Q. In what preceding clause? A. In the 11th clause; in consideration of the low rental the tenant releases the
592 Railroad Company of all damage.

Q. But that clause is not meaningless? A. I don't know. We have never tried to enforce that clause. That is, we have never had a case where a tenant has sought to recover and claim the clause was invalid.

Q. But you testified in answer to Mr. Boles' questions that the existence of this releasing covenant from or damage covenant was one of the very important elements which prevented the Railroad Company from getting as high a rental for these properties as it otherwise might

have received? A. The probabilities of that clause be- 593
ing enforced produced that result.

Q. But the possibility of the shipping clause being enforced produced no such result? A. No.

Q. You ask us to accept that as your testimony, do you? A. Yes, sir.

Q. The language of each clause being substantially the same, "In consideration of the low rental" and so forth. A. "In consideration of the low rental" appears in both clauses, yes.

Q. Then your contention is that the use of the form 594
of lease containing the shipping clause in preference to the form of lease without the shipping clause was due purely to accident? A. No, there was no preference about it. During that period of time we had the form of rent lease with the clause in and we used it, and then we had it reprinted; we reprinted it again with the form and we did not use the shipping clause in it.

Q. You did not use the shipping clause in it? A. No, sir.

Q. But as late as 1907, at least you were printing new 595
forms with the shipping clause in? A. Yes, and my recollection, which I have refreshed since the adjournment is that that is the only set of leases that were printed with the shipping clause printed in. In other words, at the other times when we printed these leases the shipping clause was not printed in the lease.

Q. But inserted separately? A. Inserted separately.

Q. On a typewritten slip or something of that sort? A. On a typewritten slip or if there was room written in the lease.

Q. And you said that since you have been connected 596
with the real estate department of the Lehigh Valley Railroad you had made no investigation as to whether or not the lessees had observed this shipping covenant? A. Yes.

Q. You simply ignored that altogether? A. Yes.

Q. Treated that as not within your province at all? That is correct? A. Disregarded the clause entirely, yes.

Q. Then you don't know whether it was observed or not, excepting in the case of the Wertheim leases which

597 you referred to? A. Yes. I have some general knowledge of the situation, yes.

Q. In what other cases other than the Wertheim case then has the clause not been observed by the lessees? A. We have a number of cases.

Q. Mention them? A. The case at Auburn, the Clapp Manufacturing Company I think it is, who have the same kind of a clause in, who receive freight over other railroads. I think there are any number of our tenants and shippers who have siding agreements with this
598 clause in it to receive coal over our railroad and freight and all kinds of commodities.

Q. There are tenants of your who have siding agreements who violate the covenants? A. Yes.

Q. I would like you to make a list of those? A. I would have to go around and——

Q. Can you mention any? A. No, I cannot; but from conversation with other officials of the Railroad Company I know that there are quite a number of such tenants and shippers who have siding agreements with these shipping clauses in, who do not live up to the ship-
599 ping clause.

Q. How long have they failed to live up to the covenant? A. Personally I don't know, but I think for some time. I know it is in the Wertheim case.

Q. Well, let us come to the Wertheim case. Wertheim is suing the Railroad Company before the Interstate Commerce Commission, isn't he, for discrimination or something of that kind? A. I don't know.

Q. You haven't any knowledge at all of the pendency of any proceeding by Wertheim? A. I have heard there
600 was such a proceeding, but what it is and where it is I am not informed.

Q. Didn't you say you made this statement up in connection with that matter? A. No.

Q. For what purpose did you make up the statement? A. It is the only lease we have got that provides for a specified tonnage.

Q. You mean for shipments of a specified tonnage? A. Yes. And it is part of my duty to keep track of all

these matters, and I receive every Monday a statement 601
from the agent at Grand Street, Jersey City, showing the tonnage of the Wertheim Coal & Coke Company, and I tabulate those at the end of every month.

Q. Then that form of shipping clause you say— A. That is the only one.

Q. That is the one you do follow up? A. I have to. But that is the only one of all the leases we have got that has that provision in for a specified minimum tonnage.

Q. Did you ever offer to execute a deed releasing the 602
Wertheim Coal & Coke Company from any liability for infringement of this shipping covenant? A. I have not, no.

Q. Has anybody? A. I don't know.

Q. To your knowledge? A. No, not to my knowledge.

Q. According to the statement which you have handed in showing the total actual shipments by the Wertheim Company, and the minimum requirements of the lease, it appears that the tonnage shipped exceeded the minimum requirements up to the year ending November 1st, 603
1908, and that it practically equalled the minimum requirements for the year ending November 1st, 1909, but has been below the requirements, considerably below the requirements in each year since that time; the excess of the minimum requirements over the tonnage shipped increasing each year; that is correct, isn't it? A. I think so. (After examination of paper.) Well, it is not quite correct. The year ending November 1st, 1911, the excess was less than it was during the year preceding, or the two years following; but the last two years the excess has increased. 604

Q. Yes, that is right. What is the cause of this excess? A. I don't know.

Q. Is there any other railroad accessible, to which the Wertheim Company has access, accessible to their property? A. Do you mean could they ship into the property over any other railroad?

Q. Yes. A. Oh, yes.

Q. Which one? A. They could ship in over any railroad.

605 Q. But the only railroad which reaches the property is the Lehigh Valley? A. Yes, but they could ship down over the Central or any other railroad and make connections with us and give us only the haul or connection into the property.

Q. But they would have to pay the switching charge? A. They would have to pay the switching charge.

Q. That same condition exists, does it, in other cases of these coal yards and trestles and so forth? A. Yes.

Q. They are on the Lehigh Valley Railroad and not
606 on any other railroad? A. Well, there are very few yards on any other railroad. I don't recall any now. I think they are all.

Q. You mean there are very few at all on any other railroad? A. Yes, I should say very few on other railroads. Very few that have direct connections with other railroads than the Lehigh Valley.

Q. So that whether they contain the routing clause or not they must ship over the Lehigh Valley Railroad and receive their coal from the Lehigh Valley Railroad
607 unless they pay switching charges? A. Not necessarily, because I understand it is the custom of railroads to absorb switching charges. I don't know much about freight rates, but I don't think it follows the shipper would have to pay the switching charges.

Q. On coal brought from other lines? A. I think I am right. I am not an expert on freight rates; you have to ask somebody else those questions; but that is my impression from what I know in a general way.

Q. Your impression is that the Lehigh Valley Rail-
608 road Company does that? A. My impression is that the railroad absorbs the switching rate. That the shipper would not have to pay it. I may be wrong.

Q. After mentioning before lunch the various considerations which influenced you in fixing the rent, you stated that one of those which you have mentioned—you stated on examination by myself—that one of those considerations which you had mentioned, namely, the question of fact whether or not the shipper's business was such that he would be likely to ship over the rail-

road influenced you only in cases in which all other considerations were equal, didn't you? A. Yes. 609

Q. Now, which ones of the other considerations that you have mentioned similarly influenced you only in cases which all other conditions were equal—which ones of them affected materially the rent. A. Why, if all of the conditions were equal I would give consideration to the tenant whose financial standing was such that he would be able to pay the rent.

Q. And you would not consider that at all unless all other conditions were equal? A. Yes, that is, if we had two men who wanted to ship over the line of the railroad, or we had two men who did not want to ship over the line of the railroad, and they both wanted to pay the same rent—were willing to pay the same rent—for the same land under the same terms of the lease, I would take the man whom I thought after investigation could best pay the rent. Now, if I had two men who were equally able to pay the rent and who either would ship over the railroad or not ship over the railroad and who were willing to take our lease, I would take the man whose business was the less dangerous from a fire standpoint. There might be considerable danger; for instance, a lumber yard would not be preferred to a man who is going to put up a concrete building. A junk dealer would not be preferred to a man who is going to put up a concrete building. 610 611

Q. But you consider the financial circumstances of the lessee even in cases where other conditions are not equal, don't you? There are some men you would not rent under any condition at any any rental? A. Yes.

Q. Then that is not one of those conditions like the probability of shipping over the Lehigh Valley Railroad which you take into account only when all other things are equal. Now, I want you to mention some other ones of the considerations which you mentioned this morning that you take into account only when all other conditions are exactly equal? A. I don't think there would be any other than those three. The proposed use of the property, the character and standing and ability of the tenant to pay the rent, and, of course, 612

613 by that I mean not only his ability to pay the rent but his business reputation and the shipments over the line of the railroad would be the three which I would single out if all the other conditions were equal.

Q. But you have just stated that one of these three, namely, the financial standing and reputation of the lessee you considered, even though other things are not equal, because as you said there are some men to whom you would not rent the property anyhow? A. That question very seldom comes up, because the people who
614 go into the line of business on the Lehigh Valley are, or at least I have found very few of them who were not of financial standing such as we would pass them almost on the first instance.

Q. Still the fact remains that this is a very important factor? A. I wouldn't say it is a very important factor. We have a man at Allentown who rented a coal trestle, I think he is on your list. He vacated and owes $86 rent. He is a journeyman painter, and I would not rent to him under any circumstances. If he made appli-
615 cation I would decline his application without consideration of anything else. But in the ordinary application of the lease, the question of the man's ability to pay the rent does not come up until almost the very last, and then it comes up more often in the form that all of our rentals are payable in advance, and the tenant must pay the first rent, which is generally quarterly rent, when he signs the lease, and otherwise, we do not execute the lease.

Q. Now then, the third of these three that you put in this same category, the proposed use to which the prop-
616 erty is to be put, is also considered even when other things are not equal? A. That is generally considered almost from the first, because our operating department objects many times to the use of property. They object to the junk dealers being around station buildings; they object to lumber people being around the station or around the place where there is going to be a switch movement for instance.

Q. Then the only one after all these various considerations which you mentioned that is taken into account

only when all other things are equal is the probability of the shipments over the railroad? A. It is not among the first by any means. 617

Q. But it is the only one which is considered only when all other things are equal?

Mr. Boles: He said there were three.

Mr. Machen: He has just eliminated two of the three.

Mr. Boles: No, he has not. That is argument.

Mr. Machen: If it is a matter of argument I am willing to rest the case. 618

Q. Did I understand you to say this morning that the termination clause had been as resorted to only in cases where the tenants had failed to pay the rent? A. Or where we need the property for our own purposes. I do not recall.

Q. I want you to make out a table for me in all cases in which the termination clause has been used to oust the tenant? A. It would be absolutely impossible to make up such a statement, because I would have to go over about 15,000 files of correspondence of the kind we had here this morning. 619

Q. I am only going to ask you to consider leases of coal plants. A. I would have to go over the files to find out which are the coal yards. My leases are not separated, and each lease has a file of correspondence attached to it, and I would have to go through that correspondence to ascertain why it was terminated. It would be a stupendous task.

Q. Can you mention any case in which you have inserted the termination clause in order to get possession of the property and use it for railroad purposes? A. Oh, yes, the Hermann Lumber Company of Jersey City, the Bethlehem City Water Company lease. There are eight or nine leases at Ithaca, I cannot give you the names without considerable research, but there are a lot of properties besides the station which we vacated. There were some land at the Buffalo terminal. 620

621 By Mr. Gordon:

Q. Mr. Foster, you referred this morning to the premises leased to Van Name; can you tell me how large those premises were? A. The premises were a strip of land 300 ft. in length, 55 ft. in width at Hamburg Place, Newark.

Q. These premises are used for storing coal? A. They were.

Q. As long as the lease existed? A. He had the right to use them for that purpose. I have no knowledge as
622 to whether he actually did use them at this date or not.

Q. Wasn't he bound to use it for storing purposes? A. He was restricted to using it for storage of coal. He could not use them for storage of anything else.

Q. You bound him negatively but not affirmatively? A. Negatively but not affirmatively, yes.

Q. You said that under the Yates-Lehigh lease the lessee did sell bituminous coal? A. I didn't say he sold it. I said we gave him the right under that lease to make some alterations to eight of the pockets for the storage of bituminous coal and I think he has stored bituminous
623 coal in the pockets.

Q. How many leases did you say you had in all—not coal leases, but of all? A. Somewhere around 4,000. I have not counted them very recently.

Q. And how many did contain routing clauses? A. About January 1st, 1914, there were 430 or thereabouts which had a routing clause in.

Q. And how many leases of coal premises did you have? A. Oh, of those the coal leases are about 125.

Q. Of those containing routing clauses? A. Yes; the
624 whole thing is shown on our exhibit No. 2.

Q. We will complete it here. How many of the coal leases contained shipping clauses? A. About 125.

Q. And how many coal leases were there in all? A. 272.

Re-Cross-Examination by Mr. Boles:

Q. That $86 rent that you mentioned of the fellow who gave up the lease, did I understand you to say that was one of the leases mentioned in the petition, the man at Allentown? A. Yes.

Q. He is the man you say you would not lease now to under the circumstances? A. No. 625

Cross-Examination by Mr. Warren:

Q. Mr. Foster, the Yates-Lehigh lease to which counsel for the Government has just called your attention, are the premises included in that lease situated at Louisiana Avenue? A. In the City of Buffalo, yes, sir.

Q. Now, will you be kind enough to let me see the five original leases you produced this morning bearing date February 23rd, 1912, that counsel for the Government 626 asked you some questions about. As I understand it these leases have not been offered in evidence by the Government, am I right about that? A. No, I think they were all offered yesterday by copies in the book.

Mr. Gordon: We did not offer the whole lease.

Mr. Warren: Then as a matter of fact these leases are not in the record. Is that agreed to by counsel?

Mr. Gordon: My recollection is that we did not offer the whole lease. 627

Mr. Warren: In other words, what you did was to utilize copies of these leases and ask the witness to read the certain clause or certain clauses therefrom, is that right?

Mr. Machen: We offered a sample of the lease, and then the Obuck lease was filed in full.

Q. Well, I call your attention to a lease, the original of which is before me as you have produced it, dated February 23rd, 1912, and is for a certain tract of land 628 together with the coal trestle and its appurtenances located thereon, and used in connection therewith, situated on Woodward Avenue and Grand Street in the City of Jersey City, Hudson County, New Jersey, being the same premises at present used and occupied by the said lessee, the lessee being the Lehigh Valley Coal Company, shown colored in yellow on map hereto attached and made a part hereof, the two coal pockets in the approach to the trestle used by Coyle are excepted from

629 this lease. That is the description of the premises. Will you be kind enough to tell me, if you can from the blue print attached to the lease, the superficial area of the leased premises? A. About 60,000 square feet.

Q. Any improvements on it? A. Oh, yes.

Q. State briefly what they were? A. A coal trestle and an office and a scale house and the usual appurtenances of a coal trestle.

Q. You cannot recall the length or breadth of the coal trestle or height? A. No, I cannot.

630 Q. Now, this lease had in the original as I understand you correctly, what the counsel for the Government speak of sometimes as the shipping clause and at some other times as the routing clause; in other words, paragraph 12? A. Yes.

Q. I notice it is here entirely erased, red lines being run through each line of the twelfth paragraph, is that not right? A. It is.

Q. I understand you to say that that was done early within the present year? A. It was.

Q. By agreement of the parties then holding the lease?

631 A. By agreement of the parties.

Q. And this lease provides on its back that the consent is accorded the lessee to sublet the premises described in the lease to the Lehigh Valley Coal Sales Company, subject, however, to all the terms and covenants and conditions of the within lease, is that right? A. Yes.

Q. Executed by you as General Land and Tax Agent of the Lehigh Valley Railroad? A. It was.

Q. There is a provision in the lease that would prevent the lessee from assigning it either in whole or in

632 part without the written consent of the lessor? A. There is.

Q. And therefore, it was essential to have the written consent of the Lehigh Valley Railroad to provide for assignment to the Lehigh Valley Coal Sales Company, is that right? It was.

Q. And that was executed February 23rd, 1912? A. It was.

Q. There are certain typewritten clauses added to this printed form which you apparently used to draw this

lease, to which I want to call your attention. The thir- 633
teenth reads as follows: "The lessee further agrees to pay all taxes and assessments levied against the said land and improvements thereon and including the coal and other personal property placed by the lessee upon said premises." Then there is a provision that if it is assessed in connection with a larger tract, this being a portion, there should be an apportionment made of that part of the larger assessed tract that represents this tract, isn't that right? A. There is.

Q. Then there is further provided in the fourteenth 634
paragraph that the "lessee agrees in addition to keeping the premises herein demised in as good order and repair as they now are, to make at his own sole cost and expense any and all repairs, renewals or betterments required to the said premises during the term hereof, provided that it will not make any substantial changes, alterations and additions in or to the existing structures without the written consent of the lessor, all such alterations and additions shall become and remain the property of the said lessor." Have I read that correctly? 635
A. You have.

Q. Now, as to this lease and as to all the other four leases that I am going to call your attention to now seriatim, each having the written consent of the Lehigh Valley Railroad to an assignment by the lessee, or the subleting rather by the lessee to the Lehigh Valley Coal Sales Company, you apparently utilized the old stock printed form? A. We did.

Q. And as to all of the other four the so-called routing or shipping clause, paragraph twelve, was eliminated by erasure of each of the lines of the paragraph by red 636
ink in the same manner and at the time as the twelfth paragraph of the lease for the Grand Street premises to which I have called your attention was done, is that right? A. Yes, and the erasure was initialled by the signatory parties.

Q. I next call your attention to another lease of the same date for a tract of land together with the coal trestle and its appurtenances located therein, and used in connection therewith, situated on Poineer Street in the

637 City of Newark, Essex County, New Jersey, being the same premises at present used and occupied by said lessee, shown colored in yellow on map hereto attached and made a part hereof. Can you tell me from an examination of this map the extent of these premises and whether improved and if so how; in other words, whether it embodies structures as well as the land itself? A. It embodies the land and the structures.

Q. And what would you say, if you can, was the extent of the land? A. I will have to calculate that.

638 Q. Approximately, I mean, not with exactness, there being no description in the body of the lease of the premises, and all being by reference to the blue print, I must ask the question what the blue print discloses? A. I will have to have a scale or something to measure this.

Q. I don't want to ask you to take the time now. Can you do that and let me recall you to give me that information? A. Yes. It can be done, of course. It is a mere matter of measuring the premises by scaling the map. (After making measurement.) The land contains an area of about 2¾ acres and is improved by a coal

639 trestle and its appurtenances.

Q. I will take up the next one which was a lease of all that certain tract of land used as a coal storage plant together with the machinery and appurtenances located thereon and used in connection therewith, situated at South Plainfield, New Jersey, being the same premises at present used and occupied by the said lessee, shown colored in yellow on map hereto attached and made a part hereof. Can you give me a brief description of those premises? A. The lease covers about 26 acres of

640 land upon which is constructed a mechanical plant for handling coal. The plant unloads the coal from the cars and stacks it in piles and then reloads it on cars when required, and has the usual appurtenances of a power house and engine house and small office and tank.

Q. And what would you say was the size of the structure that contains a mechanical plant? A. Well, there are——

Q. Apparently one side of it is 1,630 feet long? A. Oh, yes.

Q. And the other side is 1,240 feet long? A. Yes. 641

Q. And then the ends are somewhat broken, as one end of it is 740 feet plus 270? A. Yes.

Q. Going to an angle? A. Yes.

Q. And at the other there are three dimensions, one 250 feet, one 215 feet, and one 330 feet? A. Yes.

Q. And in it I note are circles with designations covering pairs of the circles, a, b, and c and so forth. What does that mean? A. Those are the circumferences of the circles which are described by this coal handling apparatus. The width or extent of the—I might 642 call it the area of each storage item of the plant. There are 16 or 18 of these separate units and each one of them can store coal within a certain circumference, and the map is intended to represent the circumference of the storage capacity of each of these items.

Q. I notice that on one corner of the blue print is a designation "Receiving system," and then there are three tracks apparently three railroad tracks, is that right? A. Yes, that is the line of the Lehigh Valley Railroad Company, and has nothing to do with the 643 leased premises.

Q. What is there that is leased there, that in yellow? A. What is described and marked within the yellow line on the blue print attached to the lease, including the tracks which are within the yellow lines, but not those outside of the yellow lines.

Q Then it is a structure—— A. No, a series of structures; a series of units.

Q. I see. All within a superficial area of 26 acres? A. All within a superficial area of 26 acres.

Q. And the yellow lines represent the outside boun- 644 daries of the 26 acre plot? A. They do.

Q. Did you prepare a description of this plant, which is the South Plainfield plant, appearing on the memorandum I now show you? A. I did.

Q. Will you be good enough to read that? A. (Reading):

> "The plant is located entirely on land owned by the Lehigh Valley Railroad Company of New

645 Jersey, at South Plainfield, Middlesex County, New Jersey. The approximate area 26-73/100 acres is indicated in yellow on the blue print attached to the lease. The tracks and structural improvements were constructed by and are all owned by the Lehigh Valley Railroad Company of New Jersey. The structural improvements consist of the Dodge Coal Storage System for conveying coal from cars into hoppers, then by conveyors into storage piles, and then, if desired, back into cars. There are fourteen of these stor-
646 age piles, six with a capacity of 30,000 tons each, four with a capacity of 20,000 tons each, two with a capacity of 15,000 tons each, and two with a capacity of 10,000 tons each, making a total capacity of 310,000 tons. There is a power plant, a lighting plant and a pumping plant, office building and sundry small buildings. The plant is leased to the Lehigh Valley Coal Company by lease dated February 23rd, 1912. The annual rental is $10,247, which is 4% on a valuation of
647 $256,170 on the land and structural improvements. The lease is for a term of one year from the first day of March, 1912, and thereafter, subject to a sixty days' notice of termination. In addition to rental the tenant pays all taxes, both on land and the improvements, the insurance premiums on improvements and makes all repairs at its own expense. Permission has been given to the tenant to sub-rent the property to the Lehigh Valley Coal Sales Company without, however, re-
648 leasing the Lehigh Valley Coal Company from any of the terms or obligations of the lease.

Q. Do every one of these five leases contain paragraphs thirteen and fourteen added by typewriting to which I called your attention as to the lease for Grand Street? A. They do.

Q. In other words, paragraphs covering taxes and assessments and agreements in the matter of maintenance and keeping the premises in good order and so forth? A. They do.

Q. I show you another one of these five leases, the description of the premises in the lease being "All that certain tract of land with the coal trestle and its appurtenances located thereon, and used in connection therewith, situated southwesterly from the freight house of the lessor in the City of Rochester, Monroe County, New York, being the same premises at present used and occupied by the said lessor, shown colored in yellow on map hereto attached, and made a part hereof." That is a correct description of these premises? A. Yes, sir. 649

Q. Therefore, you must have recourse to the blue print for a description. What is the extent of the premises? A. The land contains an area of 52,250 square feet, or about 1 2/10 acres. It has on it a substantial coal trestle with the usual scale house, office and the appurtenances. 650

Q. How long has it been there? A. I don't know. It has been there ten years, anyway.

Mr. Boles: As long as you know it.

The Witness: Yes, it has been there ten years. As long as I know the property. 651

Mr. Boles: Is that also true of the South Plainfield plant?

The Witness: Yes. All of these trestles and plants have been here since I have been with the company.

Q. The rent for this plant as provided in the lease is $6,604, payable in monthly instalments, is that right? A. In addition to that the tenant pays the amounts under the thirteenth and fourteenth clauses. 652

Q. I would like to get a brief description of what you call a coal trestle? A. The coal trestle at Poineer Street, Newark, contains 152 pockets, with a total capacity of about 12,000 tons, and additional storage capacity under the trestle for 3,000 tons.

Q. I will ask you to give me the description of the premises in another one of these five leases, to wit, the premises situated on Clinton Avenue, Irvington, Essex

653 County, New Jersey, as appears in yellow on the map attached. A. The coal trestle at Irvington, New Jersey, leased to the Lehigh Valley Coal Company, contains twelve pockets with a total capacity of about 780 tons, together with 943/1000 of an acre of land.

Q. The property at Grand Street? A. The coal trestle at Grand Street, Jersey City, consists of a wooden structure containing twenty-six pockets, with a total capacity of about 4,000 tons, together with a yard containing about 60,000 square feet. The coal trestle at Rochester is a
654 structure containing 49 pockets with a total capacity of about 5,400 tons and about 1 2/10 acres of land.

Q. Can you describe for us briefly what you mean by a pocket? A. A pocket is a separation of the entire structure into a unit into which a car of coal or part of a car of coal is emptied. The entire structure being divided into a number of such units. Each unit has an opening at the top into which the coal is dumped and a chute at the bottom from which the coal is taken and dumped into the wagon.

Q. How big a thing is what you call a pocket? A.
655 They vary in size; some pockets will hold a half a car of coal and some will hold a car and some will hold more than a car. It depends entirely on the measurements thereof.

Q. In other words, it is a sort of a large-sized bin? A. That is all.

Q. To hold separate sizes of coal? A. And it is elevated above the ground so that a wagon can drive up to it and load from the bottom of the pocket into the wagon.

656 Q. It is utilized for the same size of coal; in other words, you would not dump into it—you speak of dumping into it a car of coal, or a part of a car of coal. If there were a part of a car of coal that had been dumped into it of chestnut size, you would not dump another part of a car of coal into it, the same bin, of pea size? A. No, you would have the same size in a pocket all the time.

Q. In other words, it is a contrivance to provide for the storage of the various sizes of anthracite coal? A. Yes, sir.

Horace J. McQuade, called on behalf of the Govern- 657
ment, being first sworn, testified as follows:

Direct-Examination by Mr. Machen:

Mr. Machen: Counsel for the Government having requested from the counsel for the defendant Lehigh Valley Coal Company certain statements concerning the Lehigh Valley Coal Company, and certain extracts from its records and compilations from its books, and the same having been handed to him, I now offer them in evidence as follows:

1. Table showing the officers and directors and 658
Executive Committee of the Lehigh Valley Coal Company for the years 1890 to 1913, inclusive.

Received in evidence and marked **Government Exhibit No. 35.**

2. A list of the officers and directors of Coxe Brothers & Company, Inc., from 1905 to 1914.

Received in evidence and marked **Government Exhibit No. 36.**

3. Extracts from the minutes of the Lehigh Valley Coal Company, being portions of the proceed- 659
ings and minutes of the Board of Directors of that company held on the following dates, January 9th, 1877, March 11th, 1884, October 18th, 1889, November 18, 1903, June 30th, 1905, August 8th, 1905, January 11th, 1912 and February 27th, 1912.

Received in evidence and marked **Government Exhibit No. 37.**

4. Statement of income account of the Lehigh Valley Coal Company for the years ending June 660
30th, 1903 to 1913, inclusive.

Received in evidence and marked **Government Exhibit No. 38.**

5. Statement of income account of Coxe Brothers & Company, Inc., for the years ending June 30th, 1907 to 1913, all inclusive, and for the eight months ending June 30th, 1906.

Received in evidence and marked **Government Exhibit No. 39.**

661 6. Balance sheet of Coxe Brothers & Company, Inc., as of October 1st, 1905, and as of the 30th day of June, in each year from 1906 to 1913, inclusive.

Received in evidence and marked **Government Exhibit No. 40.**

Note: It is agreed by counsel that the foregoing papers marked **Government Exhibits Numbers 35 to 40** inclusive, may be received in evidence to the same effect as if the original records from which the same purport to be taken had been duly
662 produced and proved; subject, however, to any exception which would have been available to the original if offered and proved.

Q. Mr. McQuade, will you please state your name, residence and occupation? A. Horace J. McQuade, New York, secretary and treasurer Lehigh Valley Coal Company.

Q. How long have you held this position? A. Since June 1st, 1910.

263 Q. Were you connected with the Lehigh Valley Coal Company or the Lehigh Valley Railroad Company prior to that time? A. I entered the service of the Lehigh Valley Railroad Company in 1886.

Q. In what capacity? A. As clerk in the auditing department.

Q. What positions have you had from time to time with the Railroad Company or Coal Company or both? A. The major portion of that time was devoted to the station agents' auditing, auditing of the agents' accounts
664 along the line. That was inside work. Prior to taking the position of secretary and treasurer of the Lehigh Valley Coal Company I was assistant treasurer of the Lehigh Valley Railroad.

Q. And also of the Coal Company? A. Yes; a dual position.

Q. Have you any connection or have you had any connection with Coxe Brothers & Company? A. I am secretary and treasurer of that company also.

Q. Have you been connected with any other coal companies affiliated with the Lehigh Valley Railroad, the New York & Middle Coal Field — A. I am treasurer of the New York & Middle Coal Field Company and the Wyoming Valley Coal Company. 665

Q. Have you had any position with any of the coal companies which have since been merged or dissolved, such as the Hazleton Coal Company or the Seneca? A. No.

Q. Locust Mountain? A. I was treasurer of the Locust Mountain Coal & Iron Company, but not secretary.

Q. Since you have been secretary of the Coal Company it has been the practice, has it not, to print the annual report of the Coal Company in a separate pamphlet from the annual report of the Railroad Company? A. Yes. 666

Q. Although of the same general get-up, the same paper and shape and so forth? A. Well, I don't know as to the same shape and paper.

Q. Look at it and see if you have any doubt? A. You are making a comparison now between the Railroad and the Coal Company? 667

Q. Yes. A. It has the same general appearance, yes; different colored paper.

Q. No, it is the same color of paper for each year? A. Oh, I beg your pardon, I misunderstood you. The same color for 1909, yes. When they rendered a separate report.

Please give the date of the report of the Coal Company and the Railroad Company for each year from 1909 down to the present time? A. That is the fiscal year date shown here? 668

Q. No, I mean the date of the report of the Coal Company? A. The Lehigh Valley Coal Company, fiscal year ended June 30th, 1909, dated September 29th, 1909. You want the same information as to the Railroad Company?

Q. Yes. A. Lehigh Valley Railroad Company, fiscal year ended June 30th, 1909, dated September 29th, 1909.

Q. Now, 1910. A. The Lehigh Valley Coal Company, fiscal year ended June 30th, 1910, dated August 9th, 1910.

Lehigh Valley Railroad Company, fiscal year ended June 30th, 1910, dated August 10th, 1910.

669 Lehigh Valley Coal Company, fiscal year ended June 30th, 1911, dated September 18th, 1911.

Lehigh Valley Railroad Company, fiscal year ended June 30th, 1911, dated September 20th, 1911.

Lehigh Valley Coal Company, fiscal year ended June 30th, 1912, dated August 19th, 1912.

Lehigh Valley Railroad Company, fiscal year ended June 30th, 1912, dated August 19th, 1912.

Lehigh Valley Coal Company, fiscal year ended June 30th, 1913, dated August 5th, 1913.

670 Lehigh Valley Railroad Company, fiscal year ended June 30th, 1913, dated August 6th, 1913.

Q. Do you know what is done with the amount shown as net income of the Lehigh Valley Coal Company for the years from 1903 to 1913 on **Government Exhibit No. 38**? A. No, sir.

Q. Is it credited to the profit and loss? A. I don't know, sir.

Q. Aren't you treasurer of the company? A. Yes, but I do not keep the accounts. That is the accounting department.

671 Q. You don't have anything to do with that? A. Nothing whatever.

Q. Who does? A. Mr. L. A. Tompkins, general auditor.

Q. How about Coxe Brothers; do you know anything about those? A. No, nothing about the accounts.

Q. Mr. Tompkins is the man for both? A. Yes, sir.

Q. As treasurer do you keep the cancelled notes and so forth of the company? A. Yes, sir.

Q. Please look at the paper which I now hand you, being a photographic copy of a letter signed by J. W.

672 Platten, second vice-president of the Lehigh Valley Railroad Company now on file in the records of the Interstate Commerce Commission, in case No. 4914, in the matter of rates, prices, rules and regulations, concerning the transportation of anthracite coal, which copy was duly certified by the secretary of the Commission, and state whether or not the original was formerly on file in the treasurer's office of the Lehigh Valley Railroad Company.

Mr. Boles: Were you assistant treasurer when 673
that was written?

The Witness: I was in the accounting department at that time.

Mr. Boles: I object.

The Witness: I was assistant treasurer only about a year and five months before I came to New York. I have the exact date if you would like to have it.

Q. Yes, but I am asking you whether it was on file with 674
the treasury department since you have been treasurer?
A. I cannot say.

Mr. Boles: I will admit it. I don't see why you ask him. He doesn't know.

The Witness: For a year and five months I was assistant treasurer, but not during this period.

Mr. Boles: I will admit it was written and signed and put on the files.

Mr. Machen: The files of whom?

Mr. Boles: The Railroad. I don't know whom. 675
The treasurer I suppose. The man whom it was addresed to.

Mr. Machen: It is apparently addressed to the general auditor.

Mr. Boles: I will admit it was on the files of the general auditor of the Lehigh Valley Railroad.

Mr. Machen: Of the Coal Company

Mr. Boles: No. The Coal Company has nothing to do with it. That is a letter from Platten saying that the certificates of indebtedness are given by the Coal Company here and are to be 676
put in our files and for the time being they are not to pay any specific interest.

Mr. Machen: I object to your statement of what it contains.

Mr. Boles: That is exactly what it says. It is the very words of the letter.

Letter of Mr. Platten offered in evidence, received and marked **Government Exhibit No. 41.**

677 Q. Here is a question that perhaps you will be able to answer. It is in evidence that in June, 1906, the Directors of Coxe Brothers & Company, Inc., passed a resolution that the net earnings of the company, be paid over to the Lehigh Valley Railroad Company from time to time as they accrue, without the formality of a declaration of the dividend. It is also in evidence that on April 18th, 1911, this resolution was rescinded. Do you remember the reason of the resolution? A. I have a pretty distinct recollection of such a resolution.

678 Q. Can you state whether or not since that time it has been the practice of Coxe Brothers & Company to declare monthly dividends, paying as dividends to the Lehigh Valley Railroad Company as owner of the entire capital stock all of the net earnings of the preceding months? A. Well, I should say all of the net earnings, the figures that are given to me in statements, from our general auditor, I assume they are all of net earnings. They have been so paid. I could not swear they were all the net earnings. That is the point I am trying to make.

679 Q. Please look at the minutes of the meeting of Board of Directors of Coxe Brothers & Company, Inc., held pursuant to due notice at 90 West Street, New York City, on June 26th, 1911, and read the preamble and resolutions as to declaration of dividends. A. (Reading):

> "Upon motion, duly seconded, and by the affirmative vote of all present, the following preamble and resolution were adopted. Whereas, the net earnings from the operation by this company for the month of May 1911, amounted to the sum of
680 $55,610.34, therefore, Be it resolved, that a dividend of 1.91 plus percent or $55,610.34, be paid on June 30th, 1911, to stockholders of record as shown on the books of the Company, June 27th, 1911."

Q. Hasn't it been the practice since that time to declare monthly dividends in substantially the same form of recital of the earnings for the previous months? A. Yes.

Q. And paying the whole amount to the Railroad Company in the shape of dividends? A. Yes. 681

Q. There is one other question I want to ask. Since you have been secretary and treasurer of the Lehigh Valley Coal Company, the Lehigh Valley Coal Sales Company has been formed, has it not? A. Yes, sir.

Q. Has to your knowledge any notice been received by the Lehigh Valley Coal Company since the contract of March 1st, 1912, with the Lehigh Valley Coal Sales Company stating that in the opinion of the Lehigh Valley Coal Sales Company it has become necessary to have additional facilities provided for the transaction of its business, such as storage plants, shipping trestles, docks and retail trestles, as provided for in the fourth paragraph of this contract? A. Let me see it please. (After examination of paper) I do not recall. The records will probably show. 682

Q. Your records will show? A. If it was a matter that would go before our Board for treatment for additional facilities it would show.

Q. You don't know of any such? A. I do not know positively. I do not know of any specific instance. 683

Q. You have heard it discussed? A. Yes, I have a recollection—

Mr. Warren: We would like to know who he heard it discussed with.

Q. I mean an officer of the company? A. No. I would say no to that question.

Q. By whom have you heard it discussed? A. I just had a vague recollection of that subject coming before me in some shape, but I cannot say positively without examining my records. 684

Q. I shall be obliged if you would examine your records. I will not suspend your examination, but will reserve the right to recall you after you shall have examined them. Would your answer be the same to a question whether the Coal Sales Company had given a notice to the Coal Company under the latter part of section four of this contract stating that improvements or en-

685 largements of existing facilities are in the judgment of the Sales Company necessary for the transaction of its business? A. I would make the same reply.

Cross-Examination by Mr. Wheaton:

Q. Mr. McQuade, since the first of June, 1910, when you became secretary and treasurer of the Lehigh Valley Coal Company, have you had any official position whatever with the Lehigh Valley Railroad Company? A. None whatever.

686 Q. Have you been an employe of the Lehigh Valley Railroad Company in any way at all? A. No way at all.

Re-Direct-Examination by Mr. Machen:

Q. There is one question I forgot to ask you. Where are the offices of Coxe Brothers & Company and the Lehigh Valley Coal Company at the present time? A. The offices?

Q. The principal office, yes. Where are the offices in New York of the Company? A. 143 Liberty Street.

687 Q. At one time the offices of the Lehigh Valley Coal Company and Coxe Brothers & Company were at 90 West Street, were they not? A. Yes, sir.

Q. When were they moved from 143 Liberty Street to 90 West Street? A. The removal was from 90 West Street to 143 Liberty Street. That is, my office as secretary and treasurer.

Q. But at a still earlier date they had been at 143 Liberty Street and were moved to 90 West Street, weren't they? A. I have no knowledge of that.

688 Q. That was prior to your connection with the company or prior to your residence in New York? A. Yes, sir.

Mr. Boles: What floor are you on at 143 Liberty Street?

The Witness: Third.

Mr. Boles: Are there any other coal companies' offices there?

The Witness: I am not acquainted with any other office there but the Central Railroad of New Jersey. Their claims' office.

Q. Mr. Boles: No other coal company there. 689

The Witness: Not to my knowledge; I have never gone to the other end to see.

Mr. Boles: Does the Lehigh Valley Railroad Company have any office on that floor?

The Witness: Not to my knowledge.

Q. When did the Coal Company move from 90 West Street to 143 Liberty Street? It was at or about the incorporation of the Coal Sales Company, wasn't it? A. My recollection is that it was in May, 1913. I can be 690 positive if I can look at my record here.

Q. Just look at it by all means? A. I think May, 1913. I cannot give you the exact day. That is when I removed the secretary and treasurer's office from 90 West Street to 143 Liberty Street.

Q. Do you know Paul Moore? A. No, sir.

Re-Cross-Examination by Mr. Wheaton:

Q. Mr. McQuade, 143 Liberty Street is a large office building, isn't it? A. Yes, sir. 691

Q. How many stories is it? A. 11.

Q. And hundreds of offices? A. Yes.

Q. What is the title of the building? A. I have never called it anything but the Jersey Central Building. I don't know what they call it.

Q. It is occupied by different railroad companies and offices of all sorts and kinds, isn't it? A. Yes, sir.

Q. Among those are offices of the Central Railroad of New Jersey? A. Yes, sir.

Q. Lehigh Coal & Navigation Company offices? A. Yes, sir. 692

Q. Lehigh & Wilkes-Barre offices? A. Yes, sir.

Q. Are the tenth and eleventh floors the offices of the Lehigh Valley Railroad Company? A. Yes, sir.

Q. On the third floor, among other offices, are the offices of the secretary and treasurer of the Lehigh Valley Coal Company and the general auditor of the Lehigh Valley Coal Company? A. Yes, sir.

Q. Now, when you moved over from 90 West Street you saved rent, didn't you, by coming over here; you

693 don't pay as much rent here as you paid over at 90 West Street, do you? A. Yes, I think we do.

Q. I thought you saved some rent my information was? A. No.

Q. The Coal & Iron Bank is located in this building? A. Yes, sir.

Q. And it is also known as the Coal & Iron Exchange Building, isn't it? A. Yes.

By Mr. Warren:

694 Q. Have you got your minute book there about 1912? A. Of the Lehigh Valley Coal Company?

Q. Yes. A. No; I will have to send for it.

Q. Mr. McQuade, I understood you to say that you occupied an office or offices in the building known as 90 West Street to May, 1913, is that right? A. Not from May, 1913.

Q. Up to May, 1913? A. Yes, sir.

Q. How many offices did you occupy after March 1st, 1912, in the building known as 90 West Street? A. A same number of offices.

695 Q. Do you know how many there were? A. I would be able to give it to you here exactly. Rooms 901, 905 and 906.

Q. Do you know and if you know will you state, whether you paid rent to anybody for those three rooms after March 1st, 1912, and up to May when you moved over here, and if so to whom A. We paid the Lehigh Valley Coal Sales Company rental up to the time we moved.

Q. In other words, they sublet to you those three

696 rooms? A. Exactly.

Q. And had they any association with those three rooms during your occupancy of them? A. After March 1st, 1912, in any way? A. None whatever.

Q. Will you be kind enough to turn to the minutes of the Lehigh Valley Coal Company, covering the period of February, 1912. Do you find a minute there in which there was presented the resignation of Mr. John W. Skeele as a director of the Lehigh Valley Coal Company? A. Yes, sir.

Q. Will you give us the date of that minute? A. February 27th, 1912. 697

Q. It is the same meeting out of which certain resolutions were taken which the Government has offered in evidence here, which is, to wit, Exhibit No. 37. Doesn't there appear extracts from the minutes of meetings of the Board of Directors of the Lehigh Valley Coal Company held February 27th, 1912? A. Yes, sir.

Q. Then you can say yes to my question, can't you? A. Yes, sir.

Q. That in that same meeting appears the extract which the Government offers; you say yes to that? A. Yes, I do. 698

Q. Will you read the paragraph in the minutes of the same meeting near the end of them—those two lines—read the paragraph appearing on your minutes of page 253? A. (Reading) "The president submitted the resignation of Mr. J. W. Skeele as a director of the Company which, on motion, was accepted."

Q. Read the next line. A. (Reading) "Mr. Skeele thereupon withdrew from the meeting."

Q. Read the next three lines? A. (Reading) "The president submitted the resignation of Mr. J. W. Skeele, vice-president and general sales manager, which, on motion, was accepted effective March 1, 1912." 699

Q. Now, please read two lines of the same minutes of hearing on page 258? A. (Reading) "President submitted the resignation of Mr. W. J. Burton, assistant secretary, which, on motion, was accepted."

Q. I call your attention to Government Exhibit No. 35, which is a blue print containing the list of officers and directors of the Lehigh Valley Coal Company for a certain period of time? A. Yes, sir. 700

Q. Is there any particular change by which Mr. Skeele's name drops as a director after the date of that meeting? A. Yes, sir.

Q. And he has not been a director from that date to the present? A. Yes, sir.

Q. Nor has he had any relation or association with the Lehigh Valley Coal Company from February 27th, has he, to your knowledge, at any rate? A. No, sir.

701 Q. Again calling your attention to that same exhibit, Mr. George N. Wilson's name appears as the general auditor of the company for certain years, does he not? A. Yes, sir.

Q. What are the years? A. 1903 it starts.

Q. 1903 to 1909, isn't that right? A. Right.

Q. From 1903 to 1909 G. N. Wilson is the general auditor of the company, and then he retires as general auditor, does he not? A. Yes, sir.

Q. And in 1910 Mr. L. A. Tompkins appears as gen-
702 eral auditor and during the subsequent years to the present time? A. Yes, sir.

Q. Was Mr. G. N. Wilson ever a director of the Lehigh Valley Coal Company? A. No, sir.

Q. Was Mr. William J. Burton ever a director? A. No, sir.

Q. Was Mr. A. R. Kyle? A. No, sir.

Q. Was Mr. Paul Moore? A. No, sir.

Q. Was Mr. Thomas L. Lamont? A. No, sir.

Q. Was William R. Evans? A. No, sir.

Q. Was Mr. Francis L. Hine? A. No, sir.

703 Q. Was Mr. Horatio G. Lloyd? A. No, sir.

Q. Was Mr. Lyman D. Smith? A. He is a director of the Lehigh Valley Coal Company.

Q. He is a director of the Lehigh Valley Coal Company appearing in your list of directors in what year? A. 1908.

Q. From 1908 on he is a director? A. Yes, sir.

Q. You knew Mr. Skeele, I assume, as he was at one time a director of the Lehigh Valley Coal Company? A. Yes, sir.

704 Q. Can you ascertain and give us the amount of rent you paid for the use of the three rooms in the 90 West Street Building after March 1st, 1912, and up to May, 1913, when you moved to your offices at 143 Liberty Street? A. Yes, I can get that.

Lewis A. Tompkins, called on behalf of the Govern- 705
ment, being first sworn, testified as follows:

Direct Examination.

By Mr. Machen:

Q. State your name and residence? A. 209 Midland Avenue, East Orange, New Jersey.

Q. Your occupation? A. General auditor of the Lehigh Valley Coal Company.

Q. How long have you been connected with the Lehigh Valley Coal Company or the Lehigh Valley Railroad Company? A. I was never connected with the Lehigh 706
Valley Railroad Company. I have been with the Lehigh Valley Coal Company since 1903.

Q. In what capacity? A. Auditor of the Lehigh Valley Coal Company from 1903 to 1910; since then general auditor.

Q. Are you connected with Coxe Brothers & Company, Inc.? A. Yes, sir.

Q. How long have you been so connected and in what capacity or capacities? A. As near as I can recollect from memory since November, 1905, as auditor and 707
since 1910 as general auditor.

Q. Did you have anything to do with the preparation of the balance sheet marked Government Exhibit No. 40, the balance sheet of Coxe Brothers & Company? A. Yes, sir.

Q. I note that the total assets on October 31, 1905, appear as $5,312,156.13, while a year later they appear as only $3,236,261.95? A. I did not get the item you refer to.

Q. The total assets? A. Yes. 708

Q. Do you know the cause of the diminution in the total assets between those two years; wasn't it due to the declaration of a large extra dividend which passed to the Coxe estate as the holders of the stock on October 31, 1905? A. A dividend to the Coxe estate?

Q. Yes. A. Not to my knowledge, no.

Q. Please look at the paper which I now hand you, marked **Government Exhibit No. 42**, and state what it is, whether or not it is a copy of a contract by which the

717 Q. As dividends? A. I could not say in what manner. It was paid over to them.

Q. Does that appear on your books? A. Sure.

Q. Will you produce books that will show it; produce receipts from the new owners showing it? A. To-day?

Q. No, by to-morrow morning.

Hearing adjourned to Thursday, June 25th, 1914, at 10 o'clock, A. M.

718 New York, June 25, 1914.

Hearing resumed pursuant to adjournment.

APPEARANCES AS BEFORE.

Mr. Warren: Mr. McQuade, the secretary of the Lehigh Valley Coal Company not being present this morning it is agreed if he were present he would testify that while he was at No. 90 West Street, he paid $214 monthly rental from March,
719 1912, to May, 1913, when he moved his office to No. 143 Liberty Street.

Lewis A. Tompkins, recalled.

Direct-Examination Continued, by Mr. Machen:

Q. At the close of the session yesterday you were asked to produce the receipts for the alleged dividends supposed to have been paid by Coxe Brothers & Company, Inc., at or about the time of the transfer of the stock to the Lehigh Valley Railroad Company? A. I did
720 not understand receipts, I thought you said books. The receipts are not available; they are stored at Drifton, Pennsylvania. I have the books here.

Q. Let me see the books. (After examination) What is this paper which you hand me and which I now offer, marked **Government Exhibit No. 43**? A. This is a copy of an entry on Coxe Brothers' journal transferring the surplus as of November 1st, 1905, to the credit of the Lehigh Valley Railroad Company.

Q. Was this surplus actually transferred to the Le- 721
high Valley Railroad Company as at the close of business October 31, 1905? A. The entry was made as of that date. The actual payment was in June, 1906.

Q. Was that payment by virtue of any entry or any action of the Board of Directors of Coxe Brothers & Company? A. I don't know.

Q. Upon whose authority would such payment be made? A. The instructions would come from my superior to me.

Q. Who is he? A. At that time Mr. G. N. Wilson, the 722
general auditor. I cannot remember at this time that it was exactly that.

Q. The general auditor of the Lehigh Valley Railroad Company? A. Lehigh Valley Coal Company.

Q. The Lehigh Valley Coal Company had no interest in Coxe Brothers & Company—I mean that the general auditor of Coxe Brothers & Company who was at this time Mr. G. N. Wilson—was Mr. G. N. Wilson the general auditor of Coxe Brothers & Company at that time? A. Well, up to November 1st, he was. These entries are 723
supposed to be right at the date of the transfer.

Q. This journal ends with October 31, 1905, does it not? A. Yes, sir.

Q. The entries from that time on were entered in another book? A. Yes.

Q. Won't you look at the minute book of Coxe Brothers & Company and read from the minutes of the meeting of the Board of Directors of said corporation held October 20th, 1905, the resolutions relating to the execution of the contract for the purchase by the Lehigh Valley Railroad Company of the entire capital stock of that 724
corporation? A. (Reading)

> "Whereas, by an agreement dated the 7th day of October 1905, between Alexander B. Coxe of Drifton, Pennsylvania, Alexander B. Coxe, surviving executor of Eckley B. Coxe, deceased, F. P. Wolverton, executor of Eckley B. Coxe, deceased, Eckley B. Coxe, Jr., and Alexander B. Coxe, Isadora H. Ely and Lester H. Ely, executors of E. B. Ely, deceased, of the first part, and

725 the Lehigh Valley Railroad Company of the second part, the parties of the first part agree to sell all the capital stock of Coxe Brothers & Company, Inc., of the Delaware, Susquehanna & Schuylkill Railroad Company, to the Lehigh Valley Railroad Company and as part of the consideration for the said stock the said party of the second part agrees that the parties of the first part shall retain the bonds of the different companies held as a contingent fund by Coxe Brothers & Company, Inc., amounting at par to about $1,615,000;

726 "Resolved, that the president be and he is hereby authorized and directed to convert the said stock bonds into money to pay a dividend before the first day of November, 1905, of about 6% upon the par value of the capital stock of the company, and as such dividend is hereby declared and put into the treasury of the Delaware & Susquehanna, Schuylkill Railroad Company, $90,000, to enable the treasurer of that company to pay a dividend of 6% upon the par value of the capital stock,

727 which is $1,500,000, and when the money from said bonds shall have been placed in the treasury the treasurer of this company is hereby authorized and directed to pay the said dividend."

Q. Now, won't you look at the minutes of the meeting of the Board of Directors of Coxe Brothers & Company, Inc., held October 31, 1905, and read the resolution there passed as to paying $1,000,000 out of the contingent fund? A. (Reading)

728 "Whereas, at a duly called meeting of the stockholders of Coxe Brothers & Company, Inc., a resolution was regularly passed directing the president and treasurer of the company to pay out of the contingent fund of the company $1,000,000 for the purpose of paying for the services, expenses and obligations of the company to enable the stockholders to transfer their stock free of indebtedness, as provided in the preliminary agreement of October 7th, 1905, and for providing a relief fund for worthy employes,

"Now, therefore, resolved that the President and Treasurer of the Company be and they are hereby authorized and directed to take all necessary steps to carry the said resolution into effect." 729

Q. Now, where was this payment of $1,000,000, in addition to the payment of $1,600,000 added, authorized by the previous resolution which you read? A. I know nothing about the million dollars payment except what I have learned right now.

Q. Can you prepare a balance sheet of Coxe Brothers & Company, Inc., as of say October 1st, 1905? A. I think I could. I will try to. 730

Q. I should be obliged if you would, and to offer it with your testimony, marked **Government Exhibit No. 44.** Have you the exact date of the payment of the two million, one seventy-three thousand— A. No, I cannot; I cannot establish that any closer than June, 1906, and the other papers are not here.

Q. Won't you look over the book of minutes of Coxe Brothers & Company, Inc., from the time of the purchase of this stock by the Lehigh Valley Railroad Company until the end of the year 1906, and see whether any resolution was passed authorizing the transfer to the Lehigh Valley Railroad Company of $2,173,519.45, being the balance of profit and loss account as of the close of business October 31, 1905? A. I have not been able to find any. Here is one that may cover it. (Showing). 731

Note: Counsel for the Government request counsel for Coxe Brothers & Company, Inc. to produce the resolution of the Board of Directors of that corporation, or their authority, under which the payment of the $2,173,519 balance in the profit and loss account of the said company as of the close of business, October 31, 1905, was paid to the Lehigh Valley Railroad Company. 732

Q. What is done with the net income of the Coxe Brothers & Company, Inc.? A. They declare a dividend at the end of each month if there is any net income.

733 Q. That practice I believe according to Mr.— A. There are months when it is the other way and nothing to declare.

Q. Then you don't declare anything? A. They have to wait until they catch up.

Q. But they declare the entire net earnings as dividends? A. Yes, that is right.

Q. Mr. McQuade testified yesterday I believe, that this practice of declaring the entire net earnings as monthly dividends began with a resolution passed on April 18th, 1911, rescinding a resolution adopted June 28th, 1906, 734 which has provided that net earnings should be paid over to the Lehigh Valley Railroad Company as they accrue without and formal declaration of dividend, is that correct? A. I cannot swear to this date, but the practice is correct. That is, that they are now declaring dividends and formerly paid over net earnings.

Q. Without any declaration of dividend? A. Just under the general authority.

Q. Just under the general authority of the resolution passed at the meeting held May 8th, 1906, which you 735 have just referred to? A. That continued for several years. I cannot give you the exact date, but later it was rescinded and we declared a dividend at the end of each month, after the month's earnings were ascertained.

Q. Won't you look at the minutes of Coxe Brothers & Company, Inc., for June 28th, 1906, and state who are shown by said minutes to have been present at the meeting held that day at which the resolution was passed for paying over the entire net earnings of the company to the Lehigh Valley Railroad without any formal declara- 736 tion of dividends? A. The minute book covering the meeting of June 28th, 1906, states there were present Messrs. J. E. Middleton, W. H. Sayre and J. F. Schaperkotter.

Q. And also the president of the company, Mr. E. B. Thomas? A. Yes, President Thomas, and the following members constituting a quorum.

Q. All those men were officers of the Lehigh Valley Railroad Company, weren't they?

Mr. Boles: I object; how does he know that?

The Examiner: Answer the question.

A. All of them were not.

737 Q. Mr. Thomas was president of the Lehigh Valley Railroad Company and Mr. Middleton was one of the vice-presidents, wasn't he? Schaperkotter was general counsel, wasn't he or general solicitor or some other title? A. I think so, as near as I can remember.

Q. Mr. Sayre also had an office, didn't he, of some kind? A. In the Lehigh Valley Railroad?

Q. Yes. A. Not to my knowledge. I never heard of his being a railroad officer.

Q. He was a director, wasn't he? A. Of the Lehigh 738 Valley Railroad?

Q. Yes. A. I never heard of it.

Q. Won't you look at the minutes of the meeting of the Board of Directors of Coxe Brothers & Company, Inc., of January 17th, 1906, and read the statement and resolution as to the payment of a counsel fee to Mr. J. F. Schaperkotter, general solicitor, in reference to the matter of the purchase by the Lehigh Valley Railroad Company of the capital stock of Coxe Brothers & Company? A. (Reading):

739 "The President stated to the Board that the negotiations resulting in the purchase by the Lehigh Valley Railroad Company of Coxe Brothers had entailed a large amount of detail work upon Mr. J. F. Schaperkotter, general solicitor, and in view of the extra service performed in this matter he recommended that the sum of $1,000 be paid to Mr. Schaperkotter, whereupon, upon motion duly seconded, and by the affirmative vote of all present it was resolved that the officers of the company be and they hereby are directed to pay 740 to Mr. J. F. Schaperkotter, general solicitor, the sum of $1,000 as compensation for special services in the matter of the Coxe properties purchase."

Q. Mr. Schaperkotter was general counsel for the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company, wasn't he? A. It think he was.

741 Q. He didn't have any connection with Coxe Brothers & Company prior to the purchase of this stock by the Lehigh Valley Railroad Company, did he? A. I don't know.

Q. What is done with the net income of the Lehigh Valley Coal Company as is shown on Government Exhibit No. 38? A. Used in the business.

Q. And how is it treated in the accounting, I mean? A. It is credited to the profit and loss account, if that is what you mean.

742 Q. The Lehigh Valley Coal Company has never paid a dividend, has it? A. Not to my knowledge.

Q. Certainly never since you have been connected with the Company? A. No.

Q. Are these various sums shown on these income accounts embodied in Government Exhibit No. 38 credited to profit and loss each year? A. Yes. The various amounts shown as net income.

Q. The balance sheet of the Lehigh Valley Coal Company in its annual report for 1913, shows a balance to the credit of profit and loss of $3,714,239.06, whereas the
743 net income for the fiscal year from 1903, to 1913, inclusive, as shown on Government Exhibit No. 38, is very largely in excess of that; do you know the cause of that? A. There have been various debits as the annual reports will show; I cannot recall them all, but they are all published in the reports, and I can give you a statement of them. There is another reason too, that is, for certain years, and that profit and loss account continues from the beginning of the company.

Q. But there was a balance to the credit of the profit
744 and loss account—I can give you a statement of that from the annual report and show it to you. I can get that if you wish it.

Q. A large amount of the difference is explained, isn't it, by a charge to profit and loss in the year 1912, of $2,528,880 interest on certificates of indebtedness prior to June 30th, 1911? A. Yes, a debit charge.

Q. Those were certificates of indebtedness held by the Lehigh Valley Railroad Company, were they not? A. Yes.

Q. Please look at the copies which I now hand you marked respectively **Government Exhibits 45 and 46** and state whether they are true copies of two of the certificates of indebtedness? A. I don't know. I haven't access to the certificates. They are furnished by the secretary. 745

NOTE: It is agreed that these exhibits may be received in evidence as true copies without proof of execution of the originals, subject, however, to any exceptions which would have been available against the originals if duly produced and proved. 746

Q. Do you know of any instance in which the Lehigh Valley Coal Company has issued bonds intended to be disposed of to persons other than the Lehigh Valley Railroad Company, in which the rate of interest has not been 5% or higher? A. There is $1,400,000 of a first mortgage bond held by the public that has an interest of 3 to 4%.

Q. But these bonds were originally issued as 5% bonds, were they not? A. Yes. 747

Q. And all of them were held by the Lehigh Valley Railroad Company, were they not? A. I could not say as to that. The interest rate was reduced; they were originally 5% bonds; I know that.

Q. Wasn't the certificate of indebtedness for $98,000 which has been offered in evidence, marked Government Exhibit No. 46, given in consideration of the assent by the Lehigh Valley Railroad Company to the reduction of interest on these bonds from 5% to 4%? A. Yes, I believe that is correct.

Q. Then the Railroad Company must have been the holder of the bonds? A. Well, I assume that is so. I cannot swear to that; I haven't the records. 748

Q. But in every other case in which the Coal Company, the Lehigh Valley Coal Company has issued bonds the rate of interest has been 5% or more? A. I do not recall any under 5%.

Q. Any other less than 5% you mean? A. No, I do not recall any other less than 5%.

Q. In the Lehigh Valley Coal Company income account, **Government Exhibit No. 38**, we find an entry

749 among the income from other sources than anthracite, i. e., coal sales of bituminous and commission sales; does this include the commission received for the sale of Markle coal? A. Yes.

Q. How much does that amount to, do you know—about? A. No, I could not say. I could get you the information, but I cannot tell you without reference to the books.

Q. You have it readily accessible? A. Yes, I could get it inside of an hour.

750 Q. If you will kindly get it. They show the fiscal years ending June 30th, 1911, and 1910? A. Yes, sir.

Q. Does this item of bituminous and commission sales in the income account, **Government Exhibit No. 38**, include the profit received by the Lehigh Valley Coal Company on the sale of the bituminous coal from the Snow Shoe Lands? A. Is there an item of Snow Shoe sales on there?

Q. No; there is an item of bituminous and commission sales? A. If that is the only bituminous item the profit on the Snow Shoe operation would be included in

751 that.

Q. Does the Lehigh Valley Coal Company continue to sell the Snow Shoe coal? A. The Lehigh Valley Company continue? Yes.

Q. To whom does it sell it? A. Chiefly to the Lehigh Valley Railroad.

Q. But partly to other persons? A. Yes, some sales outside.

Q. At times? A. At times.

Q. Exclusively at the mines? A. Do you mean are the

752 other sales exclusively at the mines?

Q. Yes. A. No, there are some rail sales.

Q. Whereabouts; what towns? A. In the vicinity.

Q. In Pennsylvania? A. Yes.

Q. Wholly in Pennsylvania? A. Oh, yes, in the vicinity of the operation.

Q. How much does the present company receive from this bituminous coal sold to the Railroad Company? A. I will have to get the figures on that; I cannot answer without reference to the books.

Q. Is there a contract between the two for the sale of 753
the coal? A. Yes.

Q. Is the price fixed by the contract? A. Yes, it runs by the year. I don't know whether a written contract or not. We get advices from the general manager as to the price for a period to run until—

Q. To run until further notice? A. No, it is generally one year.

Q. I would be obliged if you would get this information for us? A. Yes, I will get it for you.

Q. Did you make out the table which I now hand you 754
marked **Government Exhibit No. 47**, purporting to show bituminous coal sales by the Lehigh Valley Coal Company from 1910 to 1913, inclusive? A. Yes.

(Paper received in evidence marked **Government's Exhibit No. 47.**)

Q. Why didn't you include the Snow Shoe sales in this tabulation? A. I did not think you wanted it. I can furnish that. It was kept separately in our own accounts.

Q. This represents bituminous coal bought? A. 755
Bought and sold.

Q. Not mined by the Coal Company at all? A. No, sir, outside purchases.

Q. Will you give us a statement then of the bituminous coal from Snow Shoe mine also? A. I can do that readily. The annual report shows it.

Q. The report shows it? A. It shows the annual mining.

Q. Is the Snow Shoe coal sold to the Railroad Company at the mine? A. Yes.

Q. And the Railroad Company pays the freight for 756
transportation from the mines? A. We do not pay it. The Lehigh Valley Coal Company does not pay it.

Mr. Boles: I object to that on the ground that the witness is incompetent.

Q. What does the Lehigh Valley Coal Company pay to the Lehigh Valley Railroad Company for telegraph service? A. It pays its proportion in accordance with the contract; a varying amount.

757 Q. How long has this arrangement been in effect? A. I don't remember.

Q. One year or two years, six months? A. I would say a couple of years.

Q. Prior to that time the service had been furnished free, had it not? A. I can only speak as to my own self. I did not use it.

Q. I beg your pardon. A. I say my own department did not use the railroad service. I don't know what other departments did. We used the Western Union
758 Telegraph Company.

Q. But you have general supervision of the accounts of the Coal Company, don't you? A. Yes.

Q. You would have known of any payments for telegraph service? A. Oh, yes. I can ascertain that. I don't have it in mind.

Q. I wish you would ascertain that. A. Yes.

Q. Do you know whether the Coal Sales Company since its incorporation has called for any additional facilities from the Lehigh Valley Coal Company, or whether the Lehigh Valley Coal Company has paid for
759 any additional facilities for the Coal Sales Company? A. That refers to the storage plant?

Q. Yes, storage plant and so forth? A. There have been some additions; very small.

Q. Very small? A. So far, yes.

Q. All of those called for by the Coal Sales Company have been made by the Coal Company at its expense, haven't they?

Mr. Wheaton: I object to that.

760 A. I cannot answer that. I don't know what has been called for.

Q. Was the Lehigh Valley Coal Company in the beginning of the year 1912, making a profit on its purchase contracts for coal, anthracite coal? A. What date?

Q. The beginning of the year 1912? A. I would answer that yes.

Q. They were profitable contracts, were they? A. They were so considered.

Q. How much did the Lehigh Valley Coal Company 761
receive for the transfer of these contracts to the Lehigh Valley Coal Sales Company? A. I don't remember.

Q. The only consideration was that expressed in the written contract between the two companies, wasn't it? A. I don't know; I can verify that.

Q. Yes, verify that if you please. The offices of the Lehigh Valley Coal Company are now at 143 Liberty Street, New York, aren't they? A. Some of them.

Q. The New York offices? A. Yes.

Q. The New York offices of the Reading Coal & Iron 762
Company are also in this same building, aren't they?

Mr. Wheaton: I object to this as immaterial.

A. I could not say about it; I cannot answer that.

Q. You know it is, don't you? A. The Philadelphia, Reading Coal & Iron?

Q. The Philadelphia & Reading Coal & Iron Company? A. I cannot answer that. I don't know if they have an office in this building or not.

Q. Haven't you ever seen the name on the door as 763
you come in? A. Philadelphia & Reading?

Q. Yes. A. I don't remember to have seen it.

Q. On the directory outside of the elevator? A. It may be there, but I don't remember it.

Q. In the income account which has been offered in evidence, marked **Government Exhibit No. 38**, no interest appears to have been paid by the Lehigh Coal Company on the $10,537,000 of certificates of indebtedness outstanding in the hands of the Lehigh Valley Railroad Company from 1905 to sometime in 1912, I believe; 764
that is correct, isn't it? A. I think you will find interest in the fiscal year 1912; probably not earlier because that is what you referred to as being the profit and loss account.

Q. Yes, it was paid in a lump in 1912? A. That is my recollection.

Q. At 4%? A. Yes.

Q. Simple interest? A. Yes.

Q. None had been paid up to that time? A. No.

765 Cross-Examination by Mr. Wheaton:

Q. Mr. Tompkins, the offices of the secretary and treasurer of the Lehigh Valley Coal Company are on the third floor of this building known as the Coal & Iron Exchange Building aren't they? A. On the third floor of this building.

Q. And the offices, your offices as auditor, are on the third floor of this building? A. Third floor of this building.

Q. This is a large office building? A. Yes.

766 Q. Eleven stories in height? A. Eleven stories above the first floor.

Q. And occupied by all sorts of offices? A. Yes.

Q. And by a bank? A. Yes.

Q. And covering an entire city block in the City of New York? A. Covering a large area.

Q. It is bounded by four streets, isn't it? A. It is bounded by three I believe. I don't know on Cortlandt Street; I don't know whether it gets all the way through.

767 Q. It practically covers a city square or block, doesn't it? A. I would say so; it faces three streets.

Q. Let me ask you this; your offices as auditor were moved over from 90 West Street, when? A. May, 1912, as near as I can remember.

Q. Prior to that time your offices had been at 90 West Street, New York City? A. Yes.

Q. After the formation of the Lehigh Valley Coal Sales Company you were crowded out over there and had to move to a lower floor for quarters? A. Temporary quarters, yes.

768 Q. And as soon as you could get convenient quarters here you came over to this building on the third floor? A. We could not get adequate quarters over there.

Q. I understand you to say being unable to get adequate quarters for your offices at 90 West Street you moved over in May, 1912, to the third floor of 143 Liberty Street? A. Yes.

Cross-Examination by Mr. Boles: 769

Q. I want to ask you, Mr. Tompkins, whether the exhibit which has been put in, being the balance sheet of Coxe Brothers & Company shows as to the first item the condition of the assets at the close of business October 31, 1905? A. Yes. At the date of transfer, that is how the book stood.

Q. Then, if any resolutions had been passed prior to that date which involved the transfer of any property or cash of any kind belonging to Coxe Brothers that transfer would not be reflected in this balance sheet, 770 would it? A. No, it ought to be prior.

Q. It ought to be prior to it? A. Yes.

Q. So that the asset side of this sheet shows a figure which represents actually property transferred to the purchaser? A. Yes.

Q. Please look at the paper which I now hand you marked **Government Exhibit No. 48** and state what it is and whether it is correct? A. This is a statement of anthracite coal purchased by the Lehigh Valley Coal Company during the twelve months ending June 30th, 771 1911 and 1912 and 1913, showing the parties from whom purchased, the total purchase and the average price per ton by sizes.

Q. Mr. Tompkins, this paper shows, does it not, the anthracite coal purchased by the Lehigh Valley Coal Company during the fiscal years ending June 30th, 1911, 1912 and 1913? A. Yes.

Q. The Lehigh Valley Coal Sales Company was incorporated I believe in March, 1912, and has since that time taken over from the Lehigh Valley Coal Company coal which it purchased under these contracts, isn't it 772 so? A. That is correct.

Q. That was kept up how long? A. I believe the contracts were abrogated in May, 1913.

Q. Until they were abrogated by the decree of the United States District Court at Philadelphia the coal continued to be bought by the Lehigh Valley Coal Company and by it resold to the Lehigh Valley Coal Sales Company at the same price at which it had purchased coal from the various vendors? A. Yes.

773 Q. Mr. Tompkins, after the time that the assets reached the point shown on this exhibit which you have produced of October 31, 1905, did Coxe Brothers & Company ever make any payment to Alexander B. Coxe? A. No, sir.

Q. Or to Alexander B. Coxe as surviving executor? A. No, sir.

Q. Or to Simon P. Wolverton? A. No, sir.

Q. Or to Simon P. Wolverton as executor? A. No, sir.

774 Q. Or to Eckley B. Coxe, Jr.? A. No, sir, excepting —I am not speaking of royalty payments, any payments under leases; I don't know whether any of those names occur there or not. I understand you to be referring to these matters mentioned in the minutes.

Q. I didn't say so, I was making it broader than that, and I will say any payment in pursuance of any of the terms of the agreement of October 7, 1905, which was shown to you yesterday? A. No, there is no such payment.

775 Q. Which was made an exhibit in this case. Or any payments to Alexander B. Coxe, Isadora H. Ely or Lester H. Ely as executors or trustees? A. Not unless in the ordinary course of business.

Q. No, I mean under this contract? A. No, no such payment.

Q. Or to any of those parties jointly or severally? A. No payment to them.

By Mr. Wheaton:

776 Q. The Lehigh Valley Railroad Company so far as you know, have they any offices in the building which has been referred to as 90 West Street? A. I cannot answer that positively. I can answer it in this way, that I heard their valuation corps were in that building, but on which floor or where I don't know.

Q. If they had any there were they in any wise connected with the offices of the Lehigh Valley Coal Company when they were in that building? A. Absolutely not.

By Mr. Boles:

Q. What railroads have offices in that building? A. The Lackawanna is the only one I recall, and they have several floors. 777

Q. Do they have all of their offices there? A. That is my understanding. They have several floors.

By Mr. Machen:

Q. At the time the offices of the Lehigh Valley Coal Company were at 90 West Street in New York the Philadelphia office of the Lehigh Valley Coal Company was at 228 South Third Street, was it not? A. The Philadelphia office of the Lehigh Valley Coal Company at 228 South Third Street? 778

Q. Yes? A. Yes.

By Mr. Wheaton:

Q. That is to say, they have an assistant secretary there, haven't they? A. Yes.

Q. That is all they have there, isn't it? A. As far as I know.

Q. And all they have had there for a long time? A. As far as I know, yes. 779

Q. Occupying one room? A. Or a portion of it.

Q. No. 228 South Third Street is the chartered general office of the Lehigh Valley Coal Company, isn't it? A. So I understand.

Q. That is the designated charter office? A. Yes.

By Mr. Machen:

Q. What do you mean by the designated charter office? A. The principal office designated in the charter I suppose that means. 780

Q. And it is also the designated charter offices of the Lehigh Valley Railroad Company, isn't it? A. I don't know.

Q. Is it not, at any rate, the general office of the Lehigh Valley Railroad? A. They have offices there.

Q. Mr. Baird testified I believe they owned the building? A. That is my understanding, but I cannot swear to it.

781 **Julius I. Morrison** called on behalf of the Petitioner, being first sworn, testified as follows:

Direct Examination by Mr. Machen:

Q. What is your residence and occupation, Mr. Morrison? A. I reside in Philadelphia, and I am the general auditor of the Lehigh Valley Railroad Company.

Q. How long have you been connected with the Lehigh Valley Railroad system? A. Since 1903.

Q. In what capacities? A. I was auditor of disbursements from 1903 to 1907, auditor from 1907 to 1912 and
782 on March 1st, 1912; at that time I became the general auditor of the Lehigh Valley Railroad.

Q. Who was your predecessor as general auditor? A. George N. Wilson.

Q. Who is now president of the Lehigh Valley Coal Sales Company? A. Yes, sir.

Q. What was your occupation prior to 1903? A. I was auditor of receipts of the Kansas City Southern Railway.

Q. Do you remember the fact of the purchase by the
783 Lehigh Valley Railroad Company of the stock of Coxe Brothers & Company and of the Delaware, Susquehanna & Schuylkill Railroad? A. Yes.

Q. Was Coxe Brothers & Company affiliated with the Lehigh Valley Railroad prior to that time, or was it an independent company? A. An independent company.

Q. Were they engaged in selling coal in competition with the Lehigh Valley Coal Company?

Mr. Boles: I object to that question on the ground that the witness has no knowledge of the
784 subject and is incompetent to answer it.

A. I don't know.

Q. Was Mr. Schaperkotter counsel for the Lehigh Valley Railroad Company at the time of this purchase? A. I think he was. I would not be positive of it. I don't know when Mr. Drinker went out of the service.

Q. Where did Mr. Schaperkotter live, Philadelphia? A. Yes.

Q. Do you know whether he had any connection with 785
Coxe Brothers & Company, Inc., or with the stockholders of that company prior to the purchase? A. I don't know a thing about it, sir.

Q. Won't you look at the extracts from the minutes of the meeting of the Board of Directors of the Lehigh Valley Coal Company held June 30th, 1905 and August 8th, 1905, contained in Government Exhibit No. 37, and state whether the resolutions there passed were carried out by the auditing department with which you were connected?

786

Mr. Boles: I object to the question on the ground that the witness has not been shown to have and did not have any connection at the time with the Lehigh Valley Coal Company, the extracts from whose minutes are shown to him.

Q. Answer the question; it does not relate to the Lehigh Valley Coal Company? A. It is understood that I have nothing to do whatever with the Lehigh Valley Coal Company.

787

Q. I understand. These minutes relate to a transaction between the Lehigh Valley Coal Company and the Lehigh Valley Railroad Company? A. You wish me to read them?

Q. No, I wish you to read them to yourself, but state whether or not the transaction was put through by the Lehigh Valley Railroad Company in accordance with those resolutions of the Lehigh Valley Coal Company? A. All I would know about what the Lehigh Valley Railroad did would be reflected on the books of the Lehigh Valley Railroad.

788

Q. That is exactly so, and I want you to state whether the books did reflect the transaction in accordance with those resolutions of the Coal Company? A. I cannot from memory state whether these items and amounts are exactly the same as are reflected on the books of the Lehigh Valley Railroad Company, but we did receive and the books do reflect the receipt of certificates to the amount of $10,537,000 for apparently this same property.

789 Q. You remember, do you not, that as part of this transaction $5,000,000 of the Lehigh Valley Coal Company 5% bonds, issued under the mortagage of April, 1910, was surrendered by the Railroad Company in exchange for an equivalent amount of the certificates of indebtedness? A. My recollection is that those figures are correct, but I would not positively so state until I compare them. I will compare them and so state right after luncheon.

790 Q. Do you know when those 5% bonds, which were surrendered by the Railroad Company in exchange for these certificates of indebtednes, matured? A. No, sir.

Q. Will you please look that up? A. I will if I can here. I may have to get that from Philadelphia.

Q. I am sure that you can get that here. A. I don't know that I can, but if I can I will. I have no office here. No books are here, no portion of my office affairs or no portion of our records are in New York.

791 Q. Among the other securities, which were exchanged as part of this transaction, was $2,050,000 of Lehigh Valley Coal Company five to ten year 5% gold coal pledge bonds; do you remember when they matured? A. I will do the same on that.

Q. The Lehigh Valley Railroad Company now owns, does it not, $7,500,000 of 4% debentures of the Lehigh Valley Coal Company? A. Yes, sir.

Q. These were acquired in the year 1912, were they not, in March, 1912? A. Yes.

792 Q. Did you make affidavit to the answer of the Lehigh Valley Railroad Company to question No. 18 propounded by the Interstate Commerce Commission in the matter of a pending investigation of anthracite coal rates, Docket No. 4914? A. Is it the one that has got that item in it? Is that question the one that has got the $7,500,000? If you will let me look at it. (After examining paper). Yes, I prepared that.

Q. According to this answer these $7,500,000 of 4% debentures were bought by the Lehigh Valley Railroad Company at a premium of how much? A. They were accepted at par.

Q. Does this answer in column "h" show that the original cost to the Lehigh Valley Railroad Company of $7,500,000 of Lehigh Valley Coal Company debentures was $7,695,910.11? A. Yes, it does, but the reason for that is that that property was written down many years before. That is the cost of the original property to the Lehigh Valley Railroad that the certificates paid for. That was written down six or seven years before it was sold to the Lehigh Valley Coal Company and therefore, when we sold it to the Lehigh Valley Coal Company it was sold at the book value that stood on the books of the company and which I presume was the value at the time it was so sold. 703 704

Q. Wasn't it exchanged for certificates of indebtedness? A. Yes, it was, and in that respect that is somewhat misleading, that answer. We were trying to tell the Government the original cost to the Lehigh Valley Railroad of the property which was represented by the certificates. We got really from the Coal Company par value for the certificates in bonds and cash.

Mr. Boles: You were following the Government form? 705

The Witness: That is it.

Mr. Boles: Explain that.

The Witness: I was following the Government's form which says original cost to respondent.

Q. Read the question of the Interstate Commerce commission? A. (Reading):

"Question No. 18. Give as of June 30th, 1912, the facts provided for in form 'F' relating to all securities owned by the respondent (other than securities issued or assumed by the respondent) whether held in its treasury, pledged as collateral or held in sinking or other funds. The returns for stock should be grouped separately from those for 'securities other than stocks.' A separate statement should be made for each of the following classes: 706

797 A. Securities of system railway companies which should cover all railway companies the mileage of which is includible under classes B, C, D, E and F, in the answer to question No. 7.

B. Securities of railway companies other than system railway companies.

C. Securities of anthracite coal companies which should cover companies owning or leasing anthracite coal lands or engaged in producing or selling anthracite coal.

798 D. Securities of other companies."

Q. Now, the only portion of the answer which relates to this matter is "C"? A. It comes under the head of "C," yes, sir.

Mr. Machen: Now I offer as **Government Exhibit No. 49** the answer of the Lehigh Valley Railroad Company to the question just read, division "C."

799 Recess taken until two o'clock, P. M.

After Recess.

Julius I. Morrison, recalled:

Direct Examination continued by Mr. Machen:

Q. Can you now state after examining your records, the records of the Lehigh Valley Railroad Company, whether the resolutions of the Directors of the Lehigh
800 Valley Coal Company as passed at the meetings held June 30th, 1905, and August 8th, 1905, embodied in **Government Exhibit No. 37,** state the transaction between the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company as it was actually executed by the Railroad Company? A. Yes, with respect to the acquirement by the Railroad of the $10,537,000 certificates of indebtedness and the Lehigh Valley Coal Company's stock of $665,000.

Q. Then do I understand you to say that the Lehigh 801
Valley Railroad Company accepted 13,300 shares of the capital stock of the Lehigh Valley Coal Company of a par value of $50 each in exchange for and in payment of 13,300 shares of the capital stock of the Hazleton Coal Company? A. Yes.

Q. What was the par value of the capital stock of the Hazleton Coal Company? A. $50.

Q. At what amount was it carried on the books of the Railroad Company at this time; what valuation was carried on the books of the Railroad Company at that 802
time? A. I cannot offhand say; I don't know. That is to say, I could find that out; I don't know; I don't recollect.

Q. Won't you refresh your recollection by looking at this statement (handing witness paper)? A. (After examining paper). This paper does not show $665,000 worth of capital par value; it shows $500,000 here at a valuation of a dollar. You see, we consolidated the Hazleton Coal Company with the Westwood Coal Company. We merged the Hazleton Coal Company into the 803
Westwood Coal Company and we then took a name Hazleton Coal Company for the merged company and we paid off some mortgages and one thing and another later than this, all of which was constituted in this Hazleton Coal Company that was turned over by the Railroad Company at this subsequent date. Therefore, this information is not shown on this statement which I have before me, but it will be shown in the statement which I am expecting to prepare for you.

Q. Perhaps we had better wait then until we get this
statement. A. I am very sorry, but I do not retain 804
those items in my mind, but I do know that general information which I have given you.

Note: The Government reserves the right to recall Mr. Morrison when his statement which he has referred to is completed and examine him in reference thereto.

805 Q. Do I understand you to state that in pursuance of the resolution of the Board of Directors of the Lehigh Valley Coal Company, above referred to, passed at the meeting of June 30, 1905, certificates of indebtedness of the Lehigh Valley Coal Company were issued to the Lehigh Valley Railroad Company by the Lehigh Valley Coal Company in the amount of $10,439,000 par value, in exchange for the properties and values specified in said resolution? A. Yes, sir.

806 Q. Now, have you ascertained whether the 5% bonds of the Lehigh Valley Coal Company issued under the mortgage of April 13th, 1907, which were as part of this transaction exchanged for 4% certificates of indebtedness of the Coal Company, matured? A. The $5,000,000 of bonds mature May 1st, 1947.

Q. Have you ascertained when the $2,050,000 Lehigh Valley Coal Company five to ten year 5% gold coal pledge bonds which as part of this transaction were exchanged for a like amount in par value of 4% certificates of indebtedness, matured? A. December 1st, 1912.

807 Q. Do you remember the transactions referred to in the minutes of the Lehigh Valley Coal Company of August 8th, 1905, embodied also in **Government Exhibit No. 37**, whereby the Lehigh Valley Railroad Company assented to the reduction in interest from 5% to 4% on Lehigh Valley Coal Company bonds held by the Railroad Company and in consideration of which reduction the Coal Company issued to the Railroad Company its certificate of indebtedness to the sum of $98,000? A. I recollect the receipt of the $98,000, but as to that resolution I do not recollect that, of course, be-

808 cause I didn't know of it.

Q. Of course not. I have inadvertently used the term 4% certificates of indebtedness in referring to these certificates. I believe you testified this morning that they are in the form—— A. I did not catch that.

Q. You never saw them? A. No.

Q. But no interest was paid on these certificates of indebtedness, you testified that this morning, from 1905 to 1912? A. No, I did not testify that. I guess it was Mr. Tompkins that gave the testimony as to that.

Q. Well, that is the fact? A. Interest was paid on 809
the certificates at the time they were paid off.

Q. When they were paid off in 1912? A. Yes.

Q. And interest was not paid from year to year? A. No, sir, it was not.

Q. The interest which was paid was at the rate of 4% per annum? A. Yes, sir.

Q. Simple interest? A. Yes, sir.

Q. Please refresh your recollection by looking at the extract of the minutes of the meeting of the Board of Directors of the Lehigh Valley Coal Company, held 810
February 27, 1912, and embodied in Government Exhibit No. 27, and state whether the transaction as there authorized between the Coal Company and the Railroad Company was put through by the Railroad Company? A. Yes, that was put through.

Q. Do you remember when the Coal Company bonds matured upon which the Railroad Company assented to a reduction of interest from 5% to 4%; have you any data from which you can ascertain that? A. No, sir.

Q. Weren't these bonds of the Coal Company which 811
were held by the Railroad Company, $1,400,000 in amount, after the reduction in the rate of interest from 5% to 4% sold by the Railroad Company? A. I do not get that.

Q. (Question read) A. Not that I know of.

Q. You can look that up? A. Yes, sir.

Q. Please look that up and find out whether they were sold and if so, to whom and at what price and when. A. Have you any idea when that sale took place?

Q. Took place very shortly I think after this transaction in 1905? A. It was October, 1905; all right. 812

Q. You have the date of that wrong; it was earlier than that; prior to June 30th, 1905? A. It was in 1905 or 1904.

Q. It was in 1905 that the rate of interest was reduced? A. All right.

Q. These bonds were guaranteed by the Railroad Company, were they not? A. I don't know.

Q. Please ascertain that also? A. That is the $1,400,000 worth of bonds?

813 Q. Yes. Did you prepare the answer to the Interstate Commerce Commission's question No. 21, in the matter of the rate investigation, Docket No. 4,914? A. Will you let me look at the answer. (After reading) Yes, I prepared that.

Q. Will you file with the Examiner a copy of your answer?

Mr. Boles: No, we won't file it.

Q. I ask is that a copy of your answer? (Showing
814 witness paper) A. Yes, this is a copy of my answer.

Mr. Macbeth: Then I offer as **Government Exhibit No. 50**, question No. 21 and the answer thereto.

Marked **Government Exhibit No. 50.**

Q. Is your answer to that question correct? A. Yes.

Q. Was the balance due the Railroad Company or the Coal Company as per this statement from year to year carried on open account? A. Yes.

815 Q. Was any interest paid upon that account? A. It ought to show there if there was, I suppose. (After examining paper) Interest is shown in there chargeable in one instance under column e. Two instances there of one small sum.

Q. How does column e show interest paid? A. That was interest charged.

Q. That was interest advanced by the Lehigh Valley Railroad Company to the Coal Company, wasn't it? A. No, sir, that was interest that was chargeable to them; it was not interest advanced to them as I understand it.
816 (After consulting with another person) He is the man in direct charge of the work and has been for a great many years, and I am asking him.

Q. Maybe he would be a good man to testify? A. No, sir; he said I am right about that. He said that is the interest on the sums we have advanced to them. It is not interest paid for their account.

Q. You mean interest which was charged to the Coal Company but not paid by them? A. Charged to the

Coal Company and the account shows there how it was 817
disposed of.

Q. It was not paid by the Railroad Company? A. It was charged in open account and when the account was liquidated the amount was paid, of course.

Q. That was away back in 1890? A. Yes.

Q. And a very small amount of interest was charged in 1891? A. Yes, sir.

Q. Namely, $28.22? A. Yes; and outside of that no interest was charged.

Q. No interest has been charged since 1891? A. No, 818
sir.

Q. And the book value on the balance due on June 30th of each year is shown in the last column of this exhibit? A. Yes.

Q. Showing that on June 30th, 1890, $10,342,401.24 was due? A. I take it that is right; you are reading it.

Q. Look at it. A. (After examination of paper). The account shown in "g" with the years opposite show the exact sum due on June 30th, of each year and unpaid at that time, and that sum in 1890, was $10,342,401.24.

Q. How much was it on June 30th, 1891? A. $11,579,- 819
445.61.

Q. And on June 30th, 1892? A. $11,579,445.61.

Q. Then that amount must have remained due all the year? A. All of which year?

Q. All of the year from June 30th? A. Not necessarily.

Q. It being the exact amount it looks as if it did, doesn't it? A. Yes. It remained the same during that year, during the whole year.

Q. How much remained due on open account on June 820
30th, 1893? A. $1,549,656.61.

Q. Do you know what the reduction of the amount due on this open account was caused by? A. Yes; we received in 1893 5% gold bonds of the Coal Company at par $10,500,000.

Q. Are these bonds or any of them still held by the railroad company? A. No.

Q. What became of them? A. They were disposed of.

Q. And sold to the public? A. Some of them, yes.

821 Q. They were all guaranteed by the Railroad Company? A. I cannot say that; I don't know.

Q. All that was issued to the public I believe were guaranteed by the Railroad? A. I don't know it. It was before ever I was connected with the company.

Q. Wasn't it $1,400,000 of these bonds on which the rate of interest was subsequently reduced from 5% to 4%? A. I don't know.

Q. Can you find out? A. Yes.

Q. These also? A. All right.

822 Q. How much was the balance due on open account June 30th, 1894? A. $2,438,250.86.

Q. And during all of that time, from 1891 on no interest then was charged on these balances too? A. No.

Q. And none has ever been paid? A. No.

Q. State what is meant by column "E" showing or purporting to show amount of advances charged off by respondent during each year, the respondent being the Lehigh Valley Railroad Company? A. What is meant is that the items shown in that column "E" were charged off in the years mentioned either to the profit
823 and loss or income account of the railroad.

Q. In other words, they were simply written off the books? A. Yes, sums were written off to profit and loss or income.

Q. So that they no longer appear on the books of the Railroad Company as indebtedness to the Railroad Company by the Coal Company? A. They were credited to the open account of the Coal Company.

Q. That is to say the open account of the Coal Company was reduced by those amounts? A. Yes.

824 Q. Please add those figures up in column "E" and state how much they come to? A. $5,743,649.98.

Q. That represents then indebtedness of the Coal Company to the Railroad Company which was forgiven by the Railroad Company during these years? A. It was credited to their account. I don't know whether the Coal Company will ever have to pay it or not, but it was credited to their account.

Q. So far as the books of the Railroad Company go it certainly was forgiven? A. As far as the books of the

Railroad Company were concerned it was written off to profit and loss and credited to the coal company's account. 825

Q. You don't know whether this amount stands on the books of the Coal Company as an indebtedness to the Railroad Company? A. I don't know a thing about the Coal Company; never saw the books and never had anything to do with it.

Q. And you will find out for us what became of the $10,500,000 5% first mortgage gold bonds of the Lehigh Valley Coal Company issued to the Railroad Company in the year ending June 30th, 1893? A. I would know it if I could keep it all in my head. 826

Q. Won't you look at the table of balances due at the close of each fiscal year from other subsidiary companies besides the Lehigh Valley Coal Company as set out on page 46 of the petition and compare it with the annual reports of the Lehigh Valley Railroad Company, if you are not able to state from memory whether it is correct, and then tell us whether that table is correct or not? A. I will have to testify I was not connected with the Company at this time and, of course, I don't know as to the accuracy of it. But the items do show as advances to other controlled coal companies on the general balance sheet of the company of those dates. 827

Q. Of the Lehigh Valley Railroad Company? A. Of the Lehigh Valley Railroad Company those dates.

Q. Was any interest paid on these balances? A. I don't know.

Q. If it were paid wouldn't it appear in the income account of the Lehigh Valley Railroad Company? A. No, not necessarily. 828

Q. Where would it go then? A. It would go to the credit of profit and loss.

Q. Or interest? A. Interest, there is no telling of where it went to on these days.

Q. Whether or not any interest was paid on these balances will appear on the table which you are having prepared? A. I don't know. I have not been asked to prepare a statement of these.

829 Mr. Boles: Yes, I wrote you a letter about it yesterday.

The Witness: All right, sir, anything that is asked for will appear.

Q. In addition to these advances referred to in your answer to question No. 21 of the Interstate Commerce Commission, has not the Lehigh Valley Railroad Company paid from time to time interest upon the bonds of the Lehigh Valley Coal Company and other controlled
830 coal companies guaranteed by the Railroad Company? A. I don't know.

Q. You can ascertain this from your books? A. Yes.

Q. Won't you please prepare a statement showing all the interest paid by the Lehigh Valley Railroad Company on bonds of Coal Companies guaranteed by it?

Mr. Boles: That is already in the record.

Mr. Machen: Where.

Mr. Boles: As a foot note to the answer of question No. 21 in the record. (Reading.)

831 A. The question was, in addition to these sums was other interest charged, and I don't know whether there was or not. I do not understand there was, but, however, I would not positively swear there was not unless I looked it up.

Q. Mr. Morrison, won't you please explain the exchange shipments of coal between the Lehigh Valley Coal Company and the Lehigh & Wilkes-Barre Coal Company which you testified to before the Interstate Commerce Commission sometime ago? A. I don't be-
832 lieve I can explain that so completely, because of my unfamiliarity with it, but as I understand it, the Lehigh Valley Coal Company tendered us coal which was to go forward over the Central Railroad of New Jersey, and we moved it to the Central Railroad connections in the near vicinity of the mine, and in like manner some coal company on the Central Railroad Company—the Lehigh & Wilkes-Barre Coal Company—tendered shipments to the Central Railway and they moved it for points on the Lehigh Valley line, and the Central Rail-

road moved those shipments and delivered them to the 833
Lehigh Valley Railroad at our connection, and neither the Central Railroad nor the Lehigh Valley in either case made any charge to each other or assigned to each other any revenue for service, but moved the business through—each company did—and collected the revenue from the points of origin to destination on each line as the revenue for the service performed. In other words, it was in the nature of an exchange of services. We performed services for the Central Railroad, the Central Railroad performed services for us, and the amount of 834
coal moved was practically the same, and the arrangement was of long years standing.

Q. That is to say, there is colliery "a" on the line of the Lehigh Valley Railroad owned by the Lehigh Valley Coal Company, and there is a junction point which we will call "x," where the Lehigh Valley Railroad Company connects with the Central Railroad of New Jersey, and about the same distance from that junction point on the line of the Central Railroad of New Jersey is another colliery, which we will call "b," belonging to the Lehigh & Wilkes-Barre Coal Company. Now, 835
those being the points which we will use for the sake of illustration, explain again just what would be the service rendered by each, the Lehigh Valley Coal Company now having colliery "a" on the line of the Lehigh Valley Road, the Lehigh & Wilkes-Barre Coal Company having a colliery "b" on the line of the Central Railroad of New Jersey, the two being we will admit for the purposes of argument about equidistant from the junction point of the two railroads, which we will call "x," now, what happened? A. The Lehigh 836
Valley Railroad took the coal from the Lehigh Valley Coal Company's colliery at point "a" and moved it to "x," at which point the Central Railroad took hold of it and hauled it to destination, and collected the revenue from the point of origin to destination, "a" being the point of origin, at the regularly authorized tariff rate, and accorded no portion of that rate to the Lehigh Valley Railroad for the movement of the coal by the

837 Lehigh Valley Railroad from "a" to "x." Then in the other case the Central Railroad took coal from point "b," delivered it to the Lehigh Valley Railroad at point "x," the Lehigh Valley Railroad took it from point "x" and landed it at its final destination and collected the tariff rate to that destination from the originating point "b," and accorded no portion of the revenue to the Central Railroad for the services which it had performed, and in both cases the haul which one afforded to the other was practically the same and the
838 amount of tonnage that they moved was practically the same, and as soon as that was discovered a tariff was put into effect, at least as soon as it came to the notice of our people, a tariff was put into effect——

Q. As soon as it came to the notice of your people? A. Why, it is so—that is a matter of long standing and about a year or two or perhaps three years ago we put in a tariff that covered the service and the identical movement and we paid over to the Central and the Central paid over to us a certain sum for the service
839 which we had been performing in late years.

Q. Prior to that time was there a published rate from the colliery which we will call "a" to the point of destination on the Central Railroad of New Jersey? A. I don't know whether there was from that identical colliery, but there was from that field and the rate is practically the same from that field to all points on the Lehigh Valley Railroad and the same way on the Central Railroad of New Jersey.

Q. Where was this junction point? A. The junction point was—oh, a few, two or three miles from each of
840 the collieries, right there in the field.

Q. What is the name of it? A. It was up near Franklin Junction we called it I think, and the Franklin branch is a branch that the Lehigh Valley Railroad had trackage rights over. It is all there in that territory.

Q. Now, at that time were there joint rates in effect between the Lehigh Valley Railroad and the Central Railroad whereby coal originating on the line of one could be shipped to a destination upon the line of the other at the same rate as if it had originated from a

colliery on the line of the second railroad? A. I don't know I am sure as to that. I think there was a joint rate in certain territories. I don't believe there was to all of it. I am not familiar enough with the tariffs to state that. 841

Q. Of course, while the amount of coal may have been as you say practically the same, certainly it never could be exactly the same, one or the other did more service? A. Some years it runs one way and some years the other, and over a long series of years I looked up and the amount of coal was practically the same. 842

Q. What was the reason for this exchange? A. I don't know, sir.

Q. Did the Lehigh Valley Railroad Company furnish this similar exchange service to any other colliery or any other coal company than the Lehigh & Wilkes-Barre? A. I don't know. I don't think they would if they knew it. I never heard of it.

Q. Only the Lehigh Valley Coal Company then received this right to have this exchange coal? A. There wasn't anybody receiving it except in that instance that I know of. 843

Q. Yes, and that instance was the Lehigh Valley Coal Company? A. That seems to have been the trouble, yes. It was a very serious matter as it appeared.

Q. What pay did the Lehigh Valley Railroad Company receive for telegraph service furnished the Lehigh Valley Coal Company in former years?

Mr. Boles: I object to the question. You are assuming that we gave them a service. Ask him first the first part of the thing and then come to the second. 844

Mr. Machen: We will see what his answer is first.

Mr. Boles: No, we won't.

Mr. Machen: I asked the question and I think the question is proper.

Mr. Boles: He cannot answer the question the way you put it.

845 Q. Go on. A. What is the question?

Q. (Question read) A. I don't know.

Q. Don't you know as a matter of fact it received free telegraph service? A. No, sir.

Q. You never heard of that? A. No, sir.

Mr. Machen: That is all, except we reserve the right to recall Mr. Morrison, when we get his statement.

846 Cross-Examination by Mr. Boles:

Q. Now, just while we are on that business of exchange coal, did the Lehigh Valley Coal Company have any stock interest or financial interest of any kind in the Lehigh & Wilkes-Barre Coal Company? A. None whatever.

Q. So far as your examination of that transaction is concerned it was an exchange of services *quid pro quo*, equal for equal, wasn't it? A. That is as I have testified, yes; that is my understanding.

847 Q. And by reason of that exchange there was a considerable amount of accounting work done away with, was there not; in other words, if it had been otherwise you would have had to work out a mileage pro rate to go to the Jersey Central, and you would have had to work out a mileage pro rate to go to the Lehigh Valley, and that would go all through the record and checks drawn would balance each other in the long run? A. Yes, that is what is going on now, that is what is being done as a result of the turmoil that has been kicked up about it.

848 Q. And you saved all that trouble? A. Yes, sir.

Q. Did the Lehigh Valley Railroad Company have any interest of any kind in the freight that moved in this exchange service? A. Absolutely none whatever.

Q. Have the Interstate Commerce Commission been long familiar with that transaction? A. Yes; they came across that transaction several years ago and went over it very thoroughly, and I really did not know what it was that was stirring them up so until this year.

Q. The result of all of it was it threw a great deal more burden of work on you or on your department? A. Yes, it did. 849

Q. With no net results to the Lehigh Valley? A. None whatever.

Q. And did that exchange of service enable collieries on the Jersey Ceneral Railroad to reach western markets on the Lehigh Valley A. Yes.

Q. And it also enabled a colliery on the Lehigh Valley Railroad to reach the eastern market on the Jersey Central? A. Yes, as I understand that arrangement has now been legalized in a most technical way by the tariff and division sheets to cover it. 850

Q. And in the eastern market the Jersey Central and Lehigh Valley are competing lines of railroads in anthracite coal, aren't they? A. I think so.

Q. Answer that yes? A. Yes; most positively yes.

Q. Now, as to your answer to question No. 21 in Docket No. 4,914 of the Interstate Commerce Commission, will you read the note that applies to column "e"? A. (Reading). "Column 'e.' The amounts shown in column 'e' represent interest on Lehigh Valley Coal Company bonds guaranteed by the Lehigh Valley Railroad Company." 851

Q. Now, look at column "g," the amount of indebtedness was reduced between 1892 and 1893, about $10,000,000, was it not? A. Yes, sir.

Q. And in 1901, that amount of indebtedness amounted to $1,500,000? A. Yes, sir.

Q. And in 1902, it amounted to nothing? A. Yes, sir.

Q. And has it amounted to anything since? A. No.

Q. In other words, all of those advances have been paid? A. Yes. 852

Q. And do you understand from your familiarity with the accounts of the company that they have been paid in full, so that there is no indebtedness now by the Lehigh Valley Coal Company to the Lehigh Valley Railroad Company, except what is represented by interest bearing certificates, or interest bearing bonds? A. That is all; with the exception of current running accounts are paid monthly.

853 Q. The current running accounts would be for freight transported? A. Freight transported to the market.

Q. Under tariffs? A. Under tariffs, yes.

Q. Is there any indebtedness at the present time not represented by bonds except the current running accounts for goods transported? A. None whatever.

Q. And is interest being paid strictly in accordance with the terms of the bonds? A. Yes.

Q. Does the Lehigh Valley Railroad Company at the present time have out any 4% bonds? A. Yes.

854 Q. Under what mortgage? A. The General Consolidated Mortgage. First Mortgage and the Collateral Trust Mortgage.

Q. And about what amount of 4% bonds were outstanding under that mortgage, we will say, at the end of the last fiscal year, June 30th, 1913? A. I will have to look at the annual report for that. I cannot tell that. (After examination of annual report) 43,378,000.

Q. At June 30th, 1913? A. June 30th, 1913.

Q. I show you a general balance sheet of the Lehigh Valley Railroad Company for the year 1894 to which

855 you referred in your direct examination, and will ask you to state the amount advanced to other companies shown on that sheet? A. $206,384.67.

Q. Now, does the balance sheet show that that means companies other than coal companies? A. It is other outside companies besides coal companies.

Q. In other words, it is companies other than the Lehigh Valley Coal Company and other coal companies? A. Yes, sir.

Q. I show you the balance sheet for 1895, and will ask

856 you to state the amount of advances to other companies shown thereon? A. $510,225.77.

Q. And that is advances to companies other than the Lehigh Valley Coal Company and other coal companies? A. Yes, and other controlled coal companies, yes, sir.

Q. I will show you the balance sheet for the year 1896, and ask you to state the amount of advances to other companies shown thereon? A. $619,798.77.

Q. And that is other than coal companies? A. Yes, sir.

Q. I show you the general balance sheet for 1897, and will ask you to state the amount of advances to other companies shown thereon? A. $656,311.55. 857

Q. Other than to coal companies? A. Other than to Lehigh Valley or controlled coal companies.

Q. I show you general balance sheet for 1898, and ask you to state the amount of advances shown thereon to companies other than the Lehigh Valley Coal Company and other coal companies? A. $484,584.52.

Q. I show you the balance sheet for 1899, and will ask you to state the amount of advances shown thereon to other companies than the Lehigh Valley Coal Company or other coal companies? A. $485,918.12. 858

Q. I show you the balance sheet for 1900, and will ask you to state the same amount? A. $476,442.79.

Q. And I show you the balance sheet for 1901, and ask you the same question? A. $358,907.21.

Q. I show you the balance sheet for 1902, and ask you the same question? A. $355,007.64.

Q. And are those respective amounts shown on those balance sheets under the current assets? A. Yes.

Q. I show you the annual report of the Board of Directors of the Lehigh Valley Railroad Company to its stockholders for the year 1892, and will ask you to read from page 12 beginning at the words "The total amount" to the end of the page. A. (Reading): 859

"The total amount of advances at different times by that company to the—"

Q. What company does that refer to? A. Lehigh Valley Coal Co. (Reading continued)

"—to the coal company for lands improvements, advanced royalties, etc., exceeds $15,500,000, which has been reduced from time to time by the operations of the Coal Company to about $11,500,000. This has been further provided for by 5% bonds secured by a mortgage with sinking fund, on the property of the Coal Company in the counties of Lackawanna, Luzerne, Carbon, and Northumberland. There bonds mature in 1933, and both principal and interest are payable in gold." 860

861 Q. I now show you the annual report of the Board of Directors to the stockholders of the year 1893, and will ask you to read from the beginning with the words "Of the bonds" down to the end of the first paragraph on page 18? A. (Reading)

"Of the bonds of the Coal Company secured by the mortgage of 1892 for $12,000,000 as stated in the report a year ago, $4,000,000 have been guaranteed by the Railroad Company. $1,500,000 of these have been sold to individual coal operators
862 at par and interest. The remaining $2,500,000 and the balance of the issue under the mortgage of $8,000,000 ($10,500,000 in all) have been bought by the Lehigh Valley Railroad Company in discharge of indebtedness of the Coal Company. These bonds form a valuable asset of the Railroad Company available for future extensions and developments of our railway lines and auxiliary properties. A part of these are in use as collateral for the floating debt of the railroad company which amounted at the close of the fiscal
863 year without deduction of cash on hand, to $3,870,000."

Q. I now show you the annual report of the Railroad Company for the year 1897 and ask you to read the paragraph on page 16, beginning with the words "On April 30th?" A. (Reading):

"On April 30th, 1897, a mortgage bond for $5,000,000, due in 1947, and bearing interest at the
864 rate of 5% per annum, being a first lien on a portion of the estate of the Lehigh Valley Coal Company and a second lien on the remainder, was issued to the Lehigh Valley Railroad Company in liquidation of advances previously made by that company to the Lehigh Valley Coal Company for purchase of new properties, and for improvement. This bond is included in the securities covered by the mortgage and collateral trust deed of the Railroad Company, to which prior reference has been made."

Q. Have you seen the certificates of indebtedness 865
which were issued by the Coal Company to the Railroad in 1905? A. No, sir.

Q. I show you correct copies of two of them—of said certificates which are in the record as **Exhibits Nos. 45 and 46**, and I will ask you to state whether they contain any provision that interest is to be paid at particular periods?

Mr. Machen: I object to any statement as to what the exhibits contain; the exhibits themselves being the best evidence. 866

Mr. Boles: You asked him the question whether interest was paid thereon from year to year.

Mr. Machen: I asked what had actually been done and you are asking what the certificates show shall be done.

Q. Answer the question. A. There is no provision for interest payable at any period.

Q. I show you a copy of a letter written by Mr. J. W. 867
Platten to Mr. G. N. Wilson, General Auditor; have you ever seen the original? A. Yes, sir.

Q. Was it taken from the files in your department? A. Yes, sir.

Q. Has it always been in those files since received, as far as you know? A. Yes, sir. Of course, it is not in our files now, the Government has it.

Q. Has interest been paid on those certificates from the date of issue? A. Yes, sir.

Q. At what rate? A. 4%. 868

Q. I show you your answer to question No. 18, Docket No. 4914, subdivision "c," and will ask you whether in column "c" the amount of $7,500,000 bonds of the Lehigh Valley Coal Company represents a partial payment of the said certificates of indebtedness which I have just referred to before? A. Yes.

Q. And how was the balance of the certificates paid? A. Cash.

869 Q. And these bonds of the Coal Company to the Railroad carried what rate of interest? A. 4%.

Q. Payable how often? A. Semi-annually.

Q. And has it been paid regularly? A. Yes.

Q. You were shown resolutions this morning providing for the transfer of the Seneca Coal Company and the Righter Coal Company and Warriour Run & Wyoming Valley Coal Company stocks owned by the Railroad and transferred to the Lehigh Valley Coal Company; were those stocks transferred for a consideration
870 which equalled the then value thereof shown in your accounts? A. Yes, sir, substantially, there was about $5,000 more paid for them. In other words, the items were put into even thousands of dollars and there was about $5,000 more paid than they stood on the books.

Q. The Coal Company gave that much more you mean? A. Yes.

Q. Do your books show that the Lehigh Valley Railroad Company received dollar for dollar the amount at which those stocks were carried on our books at the time of sale? A. Yes, sir.

871 Q. And did that amount represent the cost plus such increases in value as there may have been added to your books, or such decrease in value as there may have been taken from your books? A. Yes; it is my recollection that the price at which this property was turned over to the Coal Company was exactly what that property cost the Railroad Company.

Mr. Machen: Which property?

The Witness: This Seneca and Connell and those properties there.

872 Q. Is it correct then to say that those stocks having been acquired in 1901 were sold by the Railroad in 1905 at an amount which represented the exact value thereof to the Railroad as reflected by the price received from the stock or the loss incurred on the stock? A. I should say that the amount received by the Railroad Company in 1905 is exactly the same that the Railroad Company's books show was paid for those properties in 1901.

Q. And any increases in value were actual increases and any decreases were actual losses? A. Yes. I want to amend that reply in one thing. The Hazleton Coal Company was not covered by the certificates of indebtedness, but was an exchange of capital stock of the Coal Company for the same amount—the exchange of stock for stock. 873

Q. Did the Lehigh Valley Railroad Company lose anything by any of the stock purchases?

Mr. Machen: I object to that. I have been very patient with your questions, but I think that is going a little too far. 874

Q. State your answer? A. I cannot answer as to the Hazleton Coal Company because it is a very much involved transaction, and I would have to look the matter up, but on the others they lost nothing. They really got their money back for what they had spent on the property or for the property.

Q. The Hazelton Coal Company you leave in abeyance? A. That is it exactly, because I really am not in position to answer; I don't know at the present time. 875

Re-Direct Examination by Mr. Machen:

Q. Referring to the Hazleton Coal Company there was not merely at this time an exchange of stock of that company for the stock of the Lehigh Valley Coal Company but there was also an exchange of bonds of the Hazleton Coal Company for certificates of indebtedness of the Lehigh Valley Coal Company. What was the book value on the books of the Lehigh Valley Railroad Company of these Hazleton Coal Company bonds which as part of this transaction was exchanged in 1905, for certificates of indebtedness of the Lehigh Valley Coal Company in the form appearing in the record as Government Exhibits numbers 45 and 46? A. $724,000. 876

Q. What was the par value of these bonds? A. $1,844,000.

Q. When were these bonds of the Hazleton Coal Company acquired by the Lehigh Valley Railroad Company?

877 A. I don't know. I can't tell you that. (After examining papers). We acquired them in 1896.

Q. Was the Hazleton Coal Company incorporated in the year 1896, and did not the Lehigh Valley Railroad Company transfer to it certain coal mines formerly owned by the Railroad Company in payment for the capital stock of the Hazleton Coal Company, in payment for the $450,000 in par value of the capital stock of said Hazleton Coal Company and $2,000,000 in first mortgage bonds of said Hazleton Coal Company and $50,000
878 being paid by the Hazleton Coal Company in cash? A. I can answer yes to that and clean it up, can't I, Mr. Boles?

Mr. Boles: I don't know. You had better read that resolution to answer that and make your own answer from the resolution.

The Witness: I think it would be a good deal shorter for me to figure this all out to just let me read the thing and get it in.

879 Q. It is all in the record; the simple facts are that the Railroad Company transferred the land to the Coal Company and in exchange received from the Coal Company $2,000,000 in first mortgage bonds of the Hazleton Coal Company and $450,000 in par value capital stock of the Hazleton Coal Company A. Yes, sir.

Q. And $50,000 in cash. Isn't that the sum and substance of the transaction? A. Yes.

Mr. Boles: Is that a total of $2,500,000?

The Witness: Yes.

880 Q. What was the exact date of that transaction? A. The date of the meeting is September 8th, 1896.

Q. At what valuation was the bond of the Hazleton Coal Company carried on November 30th, 1896? A. It was carried at $822,221.63.

Q. And what was the $425,000 par value of Hazleton Coal Company stock? A. $1. That is $500,000 worth of stock.

Q. But $50,000 worth of stock was paid in cash, wasn't 881
it? A. Yes, that is right.

Q. So that within two months after the incorporation of the Hazleton Coal Company the bonds which the Lehigh Valley Railroad Company had received in payment for these lands were carried at— A. $822,000.

Q. Less than 50%—considerably less—about 40% of their par value upon the books of the Railroad Company? A. Yes, sir.

Q. And the stock of the Hazleton Coal Company which had been paid for in the way we have described 882
was transferred to these lands, and part of it by the payment of $50,000 in cash that was returned to the Railroad Company has been written down to a valuation of $1? A. Yes. But that whole situation is a case of the bonds and stocks being one transaction, and the total book value of the bonds was nothing. The stock was nothing if the bonds were not paid, which would, of course, follow. Of course, if the bonds were not worth 50 cents on the dollar the stock was not worth a cent, and the land that they got might have been worth $25.

Q. The holdings of the Railroad Company in bonds 883
of the Hazleton Coal Company had been diminished from between 1896 and 1905 from $2,000,000 par value to $1,844,000 par value, had they not? A. Yes.

Q. How did those reductions come about? A. I don't know.

Q. And those remaining bonds were carried on the books of the Railroad Company at $724,000? A. Yes.

Q. In 1905? A. Yes.

Q. If in 1905, the bonds of the Hazleton Coal Company were worth less than half of their par value why 884
did it come that the Lehigh Valley Coal Company issued its stock at par in exchange for the stock of the Hazleton Coal Company? A. Those properties were turned over to the Coal Company at the book account of the Lehigh Valley Railroad.

Q. What was the book value— A. And that is not the same as the property covered by those bonds, because, as I explained to you before, the Hazleton Coal Company stock included also the Westwood Coal Com-

885 pany when it was turned over to the Coal Company, and at the time you speak of it only included the Hazleton Coal Company property; therefore, it was an entirely different property that is under consideration.

Q. But how could the stock be worth par when the bonds were worth only 50% or less than 50%? A. The stock might be worth 500%.

Q. And the bonds be worth less than par? A. And the bonds that applied on a portion of the property be worth less than par.

886 Q. Although they were an obligation of the corporation which owns the entire property? A. No, sir, they were not. They were issued by a corporation that was superseded by the company that owned the property and turned it over to the company that owned the stock.

Q. We will ask you to give us a more detailed statement of this matter. A. That will be covered, as I stated.

Q. This stock of the Hazleton Coal Company was acquired at what valuation on the books of the Railroad
887 Company on June 30th, 1904, this $500,000 of capital stock? A. I said that once; it is all in the record.

Q. We will ask you to prepare a statement showing the terms of consolidation or merger or whatever the arrangement was between the Hazleton Coal Company and these other companies, the Westwood Coal Company and the Coal Ridge Improvement & Coal Company which took place in 1904, do you remember? A. I really don't remember.

Q. Now, lest we forget, you testified all the indebted-
888 ness shown— A. The bottom of the statement is what I testified to.

Q. No, what you testified was that there was now no indebtedness of the Lehigh Valley Coal Company to the Lehigh Valley Railroad Company not represented by the bonds, except some little current indebtedness from month to month which you settled each month? A. Yes, that is right.

Q. That is right, but that is predicated upon the assumption that the $5,755,090.98, being the sum of the

item in column "e" in the answer to question No. 21, 889
which was charged off on the books of the Lehigh Valley Railroad Company is no longer an indebtedness due from the Coal Company to the Railroad Company? A. That is my statement, that there is nothing on the books; it was written off to profit and loss.

Q. In other words, when you said there was no indebtedness at the present time from the Lehigh Valley Coal Company to the Lehigh Valley Railroad Company which was not represented by bonds or debentures or certificates of indebtedness, you meant that there was 890
no such indebtedness which appears on the books of the Railroad Company? A. That is exactly what I meant, yes, sir.

Q. Now, referring to the letter from Mr. Platten, dated June 30th, 1905, that letter says—will you look at that letter and read the sentence relating to the payment of interest upon these certificates of indebtedness of $10,537,000 in amount issued by the Coal Company to the Railroad Company in the year 1905? A. What is it you wish me to do, sir?

Q. Read the last sentence? A. (Reading). "They 891
are not to bear any specific rate of interest and none is to be paid thereon."

Q. And your understanding of that is I presume that that letter means that interest was never to be paid upon those bonds?

Mr. Boles: Objected to. The letter speaks for itself. The best evidence of what the letter means is what was done under it.

A. My interpretation of that letter is that the auditor 892
was not to accrue interest on those bonds or certificates and that no specified rate was made. Consequently when there was no specific rate he could not accrue interest and he was told there that he was not to accrue interest.

Q. You testified before the Interstate Commerce Commission some little time ago? A. Yes, I did, and

893 I testified that that subject was a matter of very considerable noise by Mr. Glasgow. He dwelt on it at great length and at that time——

Q. Was that in the Meeker case? A. Yes, and I was there in Washington all of that case and testified very considerably in it, and in the discussion, you will find in my testimony at the Bellevue-Stratford I said that it was under discussion between the lawyers and the rest of them.

Q. The occasion I refer to is more recently, you tes-
894 tified— A. In the Bellevue-Stratford a short time ago in the rate case, I believe.

Q. You testified on the 16th of last January before the Examiner, Smith? A. Yes.

Q. Docket No. 4,914? A. Yes, at the Bellevue. That is the only time I did testify at the Bellevue.

Q. Didn't you say there that you gathered from this letter that the Coal Company would never pay any interest on the bonds? A. No, sir, I did not. I positively did not.

Q. Didn't you say "I don't remember seeing that
895 letter?" A. I didn't say it.

Q. Let me finish up. "From my knowledge and conversations I heard by the various officials of the company I have never understood the statement made in that letter that no interest was to be paid on them"—then Mr. Boles interrupts and says "And he don't say that," and you are reported to have said in reply "That is what I gathered, that is what that says, that we never were to pay any interest on it," did you say that? A. It says none is to be paid thereon.

896 Q. Didn't you say that? A. No, I don't think that is right, what I said exactly.

Q. You have changed since then? A. No, sir, I have not changed since then, not the slightest, because this was discussed very fully with Mr. Frank Platt and the other attorneys who had charge of the case at luncheon and other times.

Q. It is not the Meeker case? A. No, but this letter was taken from my files and sprung on me by an attorney in the Bellevue-Stratford and I had never seen the letter until I saw it in the Bellevue-Stratford.

Q. And you just interpreted it, naturally, in accord- 897
ance with what a natural man would do? A. No, sir, I did not, I don't think any—I will say this: if that statement was to be made that no interest was to be paid it would not be made to an auditor; it would be made to the treasurer of the company and the only interest that the auditor had in the transaction was whether or not he was to accrue interest and handle his income account month by month as his business went over—and that is all that it would mean to an auditor, and no auditor, I don't care where he is in the United States, would 898
put any other interpretation on that I don't believe.

Q. Do you remember having testified as follows before the Interstate Commerce Commission: "Mr. Hickey: Well, do you feel that you are able to interpret the meaning of that letter? Mr. Morrison: Why, I don't know whether I am able to or not. I should think anybody could interpret it that could read it." A. I think so.

Q. And you think that if the letter means that no interest would ever be paid upon the certificates it ought 899
to have been addressed to the treasurer? A. I think that any communication with regard to the interest to be paid would be addressed to the treasurer and that a letter to the auditor would be with reference to the accruing of the interest, because the auditor has nothing whatever to do with the collection or payment of interest.

Q. Now, I will ask you to read the note at the top of this letter and state whether it does not appear that a letter of the same date was sent to Mr. Alderson? A. (Reading) "Copy of letter of this date to Mr. Alderson sending him the following certificates of indebted- 900
ness from the Lehigh Valley Coal Company to the Lehigh Valley Railroad, Connell 412,000, Seneca 773,000, Righter 292,000, Warriour Run 998,000, Wyoming Coal & Land Company 130,000, total 7,384,000. These certificates are to be placed in the treasury of the Railroad Company at—

Mr. Boles: Now, tell what that means in view of the course of business of this company?

901 The Witness: Well, these bonds and all the securities of the company are, of course, held by our treasurer and that enclosed to him these documents—

Q. Alderson was the treasurer of the Lehigh Valley Railroad? A. Yes.

Q. And also of the Lehigh Valley Coal Company at that time, wasn't he? A. Yes, I guess he was at that time. Now, this letter that is spoken of enclosed to him
902 the certificates. That is what that means.

Q. Can you produce that letter to Mr. Alderson? A. No, sir.

Q.Where is it? A. I should think it would be with the treasurer of the company.

Mr. Machen: Counsel for the Government requests that counsel for the Lehigh Valley Railroad Company and Lehigh Valley Coal Company produce this letter.

Mr. Boles: I will produce that. There is no objection to it. I think the Government has it,
903 though.

Q. You were asked by Mr. Boles in reference to entries on the balance sheets of the Railroad Company under the head of advances to other compnies? A. Yes.

Q. That is to other companies than controlled companies or controlled railroad companies? A. I don't know what other companies they are. I cannot tell you. All I know is that this is what it reads in the balance sheet. Those are to other companies than our subsidiary
904 companies.

Q. Either railroad or coal companies? A. Yes, any other companies.

Q. Does it include water companies with them? A. No, sir, I should say not. Not controlled water companies.

Q. Where would that appear? A. Up among the other subsidiary companies; up above.

Q. Among controlled water companies? A. No, but higher in the balance sheet.

Q. "Advances to railroad and water companies in- 905
cluded in the Lehigh Valley system" would not include advances to water companies, would it? A. I don't think at that time we had water companies, but I mean it don't include any of our subsidiary companies in that item.

Q. But it would include advances, if any, made to shippers over the Railroad other than controlled companies? A. No, I should say not.

Q. Where would that appear then? A. We would not have advances for shippers.

Q. I am not asking you that question. A. It would 906
not be in there because we would not have such a thing. Amounts due by shippers would be due to the station agents and it would be in there; that made due by individuals and companies would be under that head.

Q. What would this be? A. That would be for other things, other corporations.

Mr. Boles: Tell some of them, for instance.

The Witness: I don't know just what they would be. If I had my balance sheet I could tell you exactly.

907

Q. Let us have your balance sheet next time you come? A. I will bring over my 1913 balance sheet the next time.

Q. As a matter of fact you don't know what it covers, do you? A. No, I don't know.

Q. We will get you to explain that more in detail. Now, one or two other questions. You said that by virtue of this arrangement for the exchange of shipments the collieries on the Central Railroad of New Jersey could ship to the west over the Lehigh Valley Railroad and conversely the collieries on the Lehigh Valley Rail- 908
road could ship to the points on the Central Railroad of New Jersey? A. Only those particular collieries where the exchange was made.

Q. And the only particular collieries where the exchanges were made were collieries on one side of the Lehigh Valley Coal Company and the other on the Lehigh & Wilkes-Barre Coal Company? A. Yes, that is the only place where the exchange transpired, from these

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Q. And the only particular collieries where the exchanges were made were collieries on one side of the Lehigh Valley Coal Company and the other on the Lehigh & Wilkes-Barre Coal Company? A. Yes, that is the only place where the exchange transpired, from these

909 two particular collieries. I don't think there was more than two collieries; there may be one.

Q. Then the effect of that was to establish practically a joint rate from the Lehigh & Wilkes-Barre collieries on the line of the Central Railroad of New Jersey to points reached by the Lehigh Valley system, which joint rates could only be taken advantage of by the Lehigh & Wilkes-Barre Coal Company, wasn't it? A. No, I think not.

Q. Why not? A. Because the Lehigh & Wilkes-Barre
910 Coal could probably get to that point over the—Lehigh Valley Railroad Company would get to that point via the Pennsylvania and New Jersey Central. I don't know.

Q. That is not the point. I asked you whether the effect of that shipment for exchange of coal was not virtually to give you a joint rate from the collieries of the Lehigh & Wilkes-Barre Coal Company on the line of the Central Railroad of New Jersey to points reached via the Lehigh Valley Railroad and conversely from these collieries of the Lehigh Valley Coal Company on the
911 line of the Lehigh Valley Railroad to points reached by the Central Railroad of New Jersey, which joint rate in one case could be taken advantage of only by the Lehigh & Wilkes-Barre Coal Company and in the second place only by the Lehigh Valley Coal Company? A. Well, I don't think that is right. No, because I suppose that shipment was going to Chicago; suppose that the coal was going to Chicago? This is my objection to your question as you try to force me to answer it. It could be delivered by the Lehigh & Wilkes-Barre Coal Company
912 to the Pennsylvania Railroad Company at one of their junctions and go to Chicago at exactly the same rate as it would go to Chicago via the Lehigh Valley Railroad.

Q. But that does not alter the situation that no shipper other than the Lehigh & Wilkes-Barre Coal Company could ship to Chicago, if you choose, via the Lehigh Valley Railroad and have this joint arrangement for the exchange of coal? A. I don't know sir. I am not acquainted enough with those tariffs to tell you.

Q. You said repeatedly that there was no exchange of 913
coal of this character in any case excepting the case—
A. I don't think there was, not that I ever knew of. But that tariff question is a hard question that you are asking me and I am not familiar enough with the tariff and freight business. A freight business and an auditor's business is as different as a lawyer's and an engineer's and you are asking an engineer's question for a lawyer to answer and you have got me up a tree and I don't know.

Q. Referring to your answer to question No. 4 pro- 914
pounded by the Interstate Commerce Commission, docket No. 4914, do you not find that in March, 1901, the Lehigh Valley Railroad Company acquired the entire capital stock of the Connell Coal Company for $900,000, of which $300,000 was payable in cash on March 1st, 1901, and the balance by mortgage bonds for $600,000? A. Yes.

Q. Is it not also true that in June, 1901, the Lehigh Valley Railroad Company purchased from H. L. Fuller the entire capital stock of the Seneca Coal Company for $1,000,000 of which $335,000 was paid in cash and 915
the balance in bonds of the Lehigh Valley Railroad Company? A. Yes, sir.

Q. Isn't it also true that the capital stock of this same Seneca Coal Company was sold by the Lehigh Valley Railroad Company to the Lehigh Valley Coal Company in the year 1905, for $773,000 in par value of certificates of indebtedness of the Coal Company in the form shown in the record by Government Exhibits 45 and 46? A. Yes, sir.

Q. Is it not also true that in the year 1905, the Lehigh 916
Valley Railroad Company sold to the Lehigh Valley Coal Company the entire capital stock of the Connell Coal Company for $412,000 in par value— A. Yes.

Q. Of these certificates of indebtedness of the Lehigh Valley Coal Company? A. Yes.

By Mr. Boles:

Q. Mr. Morrison, will you read the minutes of the Board of Directors meeting of the Lehigh Valley Rail-

917 road Company of October 13th, 1896, beginning at page 258 with the words "Resolved that the Lehigh Valley Railroad Company"? A. (Reading):

"Resolved that the Lehigh Valley Railroad Company guarantee the punctual payment of the principal and interest of 2,000 5% gold bonds for $1,000 each, due September 1st, 1936, secured by a first mortgage of the Hazleton Coal Company upon its property, improvements, etc., and that the officers of the Lehigh Valley Railroad
918 Company do, and they are hereby authorized to place upon the issue of said 2,000 bonds a certificate in substantially the form following and to affix its corporate seal thereto:

For a valuable consideration the Lehigh Valley Railroad Company hereby guarantees the holder of the within bond the punctual payment of the principal and interest thereof when and as the same becomes payable.

919 Q. So that it appears from that resolution that the Lehigh Valley Railroad Company guaranteed the full issue of $2,000,000 of bonds of the Hazleton Coal Company? A. Yes, sir.

Q. Is the fact that you carried those bonds on your books at a less amount than $2,000,000 necessarily an indication that this company considered them worth less than $2,000,000? A. No, I don't know why they did that, but it might be the property which they gave for these bonds and the stock may have had a valuation which
920 they considered the value which they placed on the bonds and the stock. For instance, this is what I mean; suppose that the property that they got, these Hazleton lands, stood in their books at $800,000; they might very easily enter up these bonds at the value at which this property stood on their books and determine what the true value would be when they came to dispose of the bonds. That, of course, is long before my time and I am not familiar with anything of the transaction.

Mr. Gordon: Pure speculation on your part? 921
The Witness: That is my opinion of what might transpire.

Q. And having put the guarantee of the Lehigh Valley Railroad Company on that the company was responsible for the full $2,000,000, both principal and interest? A. Certainly.

By Mr. Machen:

Q. Although it itself held the bonds? A. Certainly. 922
The minute they sold them they stood back of them.

By Mr. Boles:

Q. Do you know of any indebtedness by the Lehigh Valley Coal Company to the Lehigh Valley Railroad Company that does not appear on the books of the Lehigh Valley Railroad? A. No, I don't know of any.

Q. And it is your duty to put any indebtedness that you know of on the books? A. Yes. If I knew of any indebtedness I would go after it and find out about it and see if I could not collect it. 923

Q. But the indebtedness referred to in column "e" in the answer to Docket No. 4914, Question No. 21, that represented interest which the Lehigh Valley Railroad Company paid on bonds which it guaranteed; in other words, it is not due to the public? A. Yes; but whether they charged the Coal Company—they charged that to the Coal Company in the account, then the management or whoever was in charge at that time saw fit to charge it off. Now, why it was done you have to ask somebody who is dead, because there is nobody living, I don't 924
believe, who knows anything about it.

Q. From the books and accounts which are in your charge have you ever seen any item which represented a cancellation of the debt of the Coal Company or an advance to the Coal Company, or the payment of money or anything of value to the Coal Company for which the Railroad got nothing in return? A. Not since I have been with them.

925 Q. Or for which the Railroad Company did not get any fair equivalent in return?

Mr. Machen: Objected to.

Q. And have you ever seen anything so far as you have studied the books that were in existence before you came with the company, so far as you have looked at those books? A. I have not seen anything. I saw that entry there to profit and loss but I don't know anything about it.

926 Q. How long have you been with that company? A. Twelve.

Q. Now, when the third Hazleton Company was organized there was merged into that the Westwood Coal Company? A. Yes.

Q. And the Westwood Company in turn had received the property of the Coal Ridge Improvement & Coal Company? A. Yes.

Q. Do you know whether between the time the Connell Coal Company stock was purchased and the Seneca 927 Coal Company stock was purchased and the Righter Coal Company stock was purchased and the time it was sold to the Lehigh Valley Coal Company, whether those companies were actually engaged in mining coal? A. Yes, sir.

Q. And selling it and disposing of it? A. Yes, sir.

Q. And the same thing it true of the Warriour Run? A. Yes.

Q. And the Wyoming Valley Coal Company? A. Yes, sir.

928 Q. In other words, they had been depleting their property for four years before we sold it? A. Sure; I will say yes to that.

By Mr. Machen:

Q. You said that the bonds of the Hazleton Coal Company were guaranteed by the Railroad Company? A. I didn't know that until I read the resolution.

Q. And that therefore, when sold by the Railroad Company to a purchaser the purchaser would be entitled

to the value of the guarantee of the Railroad Company? 929
A. Precisely.

Q. And therefore, if the Railroad Company was solvent and its credit good the bonds would be good in the hands of the purchaser? A. I should say so.

Q. Then if those bonds were sold or transferred to the Lehigh Valley Coal Company they in the hands of the Lehigh Valley Coal Company were good for their face value? A. Yes, I should say so.

Q. Now, I want to ask you whether the Connell Coal Company and the Seneca Coal Company are still engaged in mining coal? A. I could not tell you about 930
that.

Q. I don't mean to say whether those particular companies, corporations, are engaged in the mining of coal, but whether those mines are still producing coal? A. I cannot tell you.

Q. You don't know how much coal was mined between the years 1901, when the stocks of these companies were acquired by the Lehigh Valley Railroad Company, and the year 1905, when these stocks were transferred to the Lehigh Valley Coal Company? A. No, sir. 931

By Mr. Boles:

Q. Referring to Mr. Platten's letter to Mr. Wilson of June 30th, 1905, which is **Government Exhibit No. 41**, is there anything on the face of that letter to show that a copy of it was sent to the treasurer of the Railroad? A. No.

By Mr. Machen:

Q. What does this mean: "Copy of letter of this date 932
to Mr. Alderson sending him the following certificates of indebtedness"? A. That means a copy of a letter of Mr. Alderson which has enclosed with that letter to Mr. Wilson.

Hearing adjourned to Friday, June 26th, 1914, at 10 o'clock A. M.

933 New York, June 26, 1914.

Hearing resumed pursuant to adjournment.

APPEARANCES AS BEFORE.

Mr. Machen: I now offer in evidence a copy of the mandate of the Circuit Court of the *United States against the Reading Company* and others, dated December 16, 1912, including the supplemental mandate, dated April 23, 1913.

934 Received in evidence and marked **Government Exhibit No. 51.**

I also offer in evidence in behalf of the Government copy of the decree of the District Court of the United States passed in said cause and bearing date May 26, 1913.

Received in evidence and marked **Government Exhibit No. 52.**

We also file on behalf of the Government a copy of the further or supplemental decree passed by the said District Court in said cause, bearing date January 29,

935 1914.

Received in evidence and marked **Government Exhibit No. 53.**

Note: It is agreed that no objection will be made to the admissibility of these copies on the ground of improper verification, or on the ground that the entire record is not incorporated in the copies.

Mr. Warren: We will agree to that provided that you extend to us the same courtesy in the matter of certain decrees which we desire to file when we get into

936 our case.

Mr. Machen: I also offer in evidence a copy of the docket entries in the case of *United States of America* v. *the Lehigh Valley Railroad Company* in the so-called Commodities Clause case. (No. 97, April Session, 1908). Lately pending in the District Court of the United States for the Eastern District of Pennsylvania. (Being the same case which was reported under the title of *United States against Delaware & Hudson Company,* 213 U. S.,

page 366, and *U. S.* v. *Lehigh Valley Railroad Company,* 937
220 U. S., page 257).

Received in evidence and marked **Government Exhibit No. 54.**

Mr. Warren: Counsel for the Lehigh Coal Sales Company asks the right to verify the copy of the docket entries, although I have no doubt they are correctly copied.

Mr. Machen: We also offer in evidence on behalf of the Government copy of the final decree in said cause passed by the District Court of the United States for 938
the Eastern District of Pennsylvania on January 27, 1913.

Received in evidence and marked **Government Exhibit No. 55.**

William J. Burton, called on behalf of the petitioner, being first sworn, testified as follows:

Direct Examination by Mr. Machen: 939

Q. State your residence and occupation? A. Secretary and Treasurer of the Lehigh Valley Coal Sales Company; residence, Hillsdale, New Jersey.

Q. How long have you held this position, since the incorporation of the Company? A. No; I have been assistant secretary. I was assistant secretary and treasurer at the incorporation of the company. Since September, 1912, I have been secretary as well as treasurer.

Q. What was your business or occupation prior to 940
your connection with the Lehigh Valley Coal Sales Company? A. I was assistant secretary of the Lehigh Valley Coal Company and Coxe Brothers & Company, Inc.

Q. How long had you been connected with this company or either of them? A. I don't know exactly; about a couple of years I think; something like that.

Q. Are any annual reports published by the Lehigh Valley Coal Sales Company? A. The Lehigh Valley

941 Coal Sales Company has never published a printed annual report; the only thing of that nature has been the reports made to the various states where it was necessary; but there has been no annual report in the general term.

Q. You mean reports made to state officials in order to acquire a license to transact business as a foreign corporation? A. In those states where we are in business, by reason of people wanting a statement once a year; but there has been no printed annual report made
942 as it is commonly called.

Q. No reports made to the stockholders of the affairs of the Company? A. No.

Q. Is the stock listed on the New York Stock Exchange? A. No, sir.

Q. Or on any stock exchange? A. It is listed on the New York Curb Market.

Q. The Curb is not exactly a stock market. A. Well, that is the only place it is listed.

Q. Please look at the paper which I now hand you marked **Government Exhibit No. 56.** and state what it
943 is? A. It is a copy of the first meeting of the incorporators of the Lehigh Valley Coal Sales Company, a copy of the minutes.

Q. Please look at the minutes of the Board of Directors of the Lehigh Valley Coal Sales Company covering a meeting held on the 16th day of February, 1912, at 90 West Street, New York City, and read the paragraph or portion of the minutes which relate to the issue of fractional certificates for shares? A. (Reading):

"The president further reported that as it would
944 be necessary to issue fractional parts of shares in tenths, and as the holders of fractional parts of shares would not be entitled to any dividends, interest or voting power and, therefore the fractional certificates would speedily be converted into full shares, he had arranged for the preparation of lithographed certificates bearing the fac-simile signatures of the vice-president and the treasurer, but to be validated by the impress of the seal of the Company, and a counter-signature, and that he had appointed Messrs. William B. Cramer, W.

F. Brogan, W. J. Corr, A. R. Kyle and W. L. 945
Summers, or any one of them, to countersign the said certificates of fractional shares."

Q. Have you compared a copy of the resolution passed at this meeting as it appears in the Lehigh Valley Coal Sales Company, providing for the offer of shares of the capital stock of that corporation to the stockholders of the Lehigh Valley Railroad Company *pro rata* for subscription, and if so, will you file the same with the Examiner? A. Yes, that is correct.

946

Paper received in evidence and marked **Government Exhibit No. 57.**

Mr. Warren: I would like to have it noted on the record that the resolution is taken out of the minutes of the meeting of February 16, 1912, and that at the foot of the resolution it appears Messrs. Lamont and Lloyd not voting.

Q. Have you prepared a copy of the minutes of the meeting of the Board of Directors of the Lehigh Valley 947
Coal Sales Company held February 28, 1912, showing the amount of stock subscribed by the stockholders of the Lehigh Valley Railroad Company, the amount subscribed by the incorporators of the Company, and the amount taken by Drexel & Company being the amount not subscribed for by the stockholders of the Lehigh Valley Railroad Company, and if so, file the same with the Examiner, in evidence marked **Government's Exhibit No. 58?** A. Yes, that is a correct copy.

Q. When the Lehigh Valley Coal Sales Company was formed it took over the business did it not, of the Lehigh 948
Valley Coal Company—the selling business of the Lehigh Valley Coal Company? A. Well I have no direct knowledge of that. It is nothing that comes under my part of the affairs of the Company.

Q. Please look at the paper which I now hand you, and state whether or not the paper is the ordinary correspondence paper of the secretary's office of the Lehigh Valley Coal Sales Company?

Mr. Warren: I will admit that.

949 A. Yes, that is the regular correspondence paper.

Q. Will you please file in evidence with the Examiner, to be marked **Government's Exhibit No. 59,** a sheet of this correspondence paper of this character? A. Yes, sir.

Q. Do the officers of the Company also use paper bearing this same device, that is to say, the black diamond in a red field with the letters L. V. in white within the diamond? A. Most of them do.

Q. The President does, doesn't he, Mr. Burton? A.
950 Yes.

Q. And you do? A.I do.

Q. Who was the first president of the Lehigh Valley Coal Sales Company? A. John W. Skeele.

Q. What position had he filled with the Lehigh Valley Coal Company prior to the incorporation of the Lehigh Valley Coal Sales Company?

Mr. Warren: If you know these questions answer; if you don't I object to them.

951 Q. Will you answer the question? A. Mr. Skeele was vice-president and either general sales manager or general sales agent, I am not sure as to his title.

Mr. Warren: Of what?

The Witness: Of the Lehigh Valley Coal Company.

Q. Who was the first vice-president and secretary of the Lehigh Valley Coal Sales Company? A. Mr. G. N. Wilson.

952 Q. Do you know whether or not he had held any position prior to that time with the Lehigh Valley Railroad Company or the Lehigh Valley Coal Company? A. He was connected with the Lehigh Valley Coal Company; I am not just sure, I think he was auditor.

Q. He was general auditor of both companies, wasn't he?

Mr. Warren: I object to that. The witness says he don't know.

Q. Wasn't he general auditor of both companies? A. 953
I am not sure as to that.

Q. Is Mr. Skeele still living, and if not, when did he die? A. Mr. Skeele died either late in August or early in September, 1912.

Q. Who succeeded him as president of the Lehigh Valley Coal Sales Company? A. G. N. Wilson.

Q. Is Mr. Paul Moore a son of W. H. Moore? A. I don't know that he is.

Q. You don't know him? A. I know who he is, but I don't know whether he is a son of William H. Moore or 954
not.

Q. You know both though? A. No, I don't know William H. Moore.

Cross-Examination by Mr. Warren:

Q. Mr. Burton, I would like to have you read or describe all that is within the boundaries of the picture or trade mark, or mark on the letterhead of the Lehigh Valley Coal Sales Company, only a part of which counsel for the government asked you to describe. I wish you 955
would give us the balance of it within those boundaries? A. The trade mark has the words "Lehigh Valley Coal Sales Company" printed inside of the boundary.

Q. And that part the counsel did not ask you about, did he? A. No.

Q. Now, you said that within your knowledge, no reports were made to the stockholders of the Lehigh Valley Coal Sales Company; you mean by that that there was no formal printed reports issued to the stockholders? A. That is exactly what I do mean.

Q. You do not mean that the stockholders of the Com- 956
pany had not submitted to them reports of the corporation in either typewritten form or otherwise at the meetings; you don't mean that? A. No, I don't mean that.

957 **William R. Evans**, called as a witness on behalf of the petitioner, being duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Gordon:

Q. What is your address? A. Bloomfield, New Jersey.

Q. And your occupation? A. Vice-president and general sales agent of the Lehigh Valley Coal Sales Company.

Q. How long have you held that position? A. Since September, 1912.

958 Q. Prior to that what position did you hold? A. I was general sales agent for the same company.

Q. And have been since its incorporation? A. Have been since its organization, yes, sir.

Q. Prior to that what position did you hold? A. I was with the Lehigh Valley Coal Company.

Q. In what position? A. Various positions. I started with the Company in Chicago in 1893, went through various offices and clerical positions, and I became assistant to the vice-president and general sales

959 manager of the Lehigh Valley Coal Company.

Q. That position you held at the time of the organization of the Coal Sales Company? A. Yes, sir.

Q. At the time of the organization of the Coal Sales Company did it also take over in a general way the selling force of the Lehigh Valley Coal Company? A. It did, yes, sir.

Q. Substantially the entire force? A. Yes, sir.

Q. And the offices which had formerly been occupied by the Lehigh Valley Coal Company, the selling offices,

960 were also transferred? A. Yes, sir.

Q. And the storage plants? A. Yes.

Q. Were leased? A. Yes, sir.

Q. Among the properties which were leased by the Lehigh Valley Coal Company to the Lehigh Valley Coal Sales Company at the time of its organization were the properties enumerated at pages 16 and 17 of the answer which I now show you of the Lehigh Valley Coal Sales Company, were they not? A. Yes, sir.

Q. How many of those properties are there? A. Nine I take it.

Q. These properties are now leased or sub-leased by you to the persons who are named in the answer of the Coal Sales Company? 961

Mr. Warren: Just a minute. I object to that on the ground that the leases speak for themselves.

Q. These properties are now occupied by the persons named in the answer of the Coal Sales Company, at page 16, are they not? A. And as excepted on page 17. 962

Q. But as excepted on page 17 they are occupied by the persons named?

Mr. Warren: You know that, do you?

The Witness: Yes. The answer states that they are as excepted and that is correct, on page 17.

Q. And do these persons hold possession under leases formerly given by the Lehigh Valley Coal Company, the reversionary interests in which have been assigned to the Lehigh Valley Coal Sales Company? A. That is true I suppose. I am not prepared to say as to one or two whether it is true or not. 963

Q. To which ones do you refer? A. The exceptions here, the Bickett Coal & Coke Company I think was made after the organization of the Coal Sales Company.

Q. Then the Bickett Coal & Coke Company holds the premises under a lease directly from the Coal Sales Company? A. That is my recollection. 964

Mr. Warren: These matters are all in writing, are they not?

The Witness: Yes.

Mr. Warren: I object to the witness testifying in parole about matters in writing, especially as I produced for the Government the original writing.

965 Q. Have you the leases with you? A. I have some leases here that were just handed to me. I presume they are the ones referred to here.

Q. Then, disregarding the three exceptions stated, the remaining six are occupied by the persons who originally held under lease from the Lehigh Valley Coal Company, are they not? A. Yes.

Q. And the interest of the Lehigh Valley Coal Company was assigned to the Lehigh Valley Coal Sales Company at the time of its organization?

966 Mr. Warren: Just a minute, I object to that, because that is a matter of writing. They were assigned by writing of the Company?

The Witness: Yes, sir.

By Mr. Machen:

Q. Are these the premises mentioned in "Schedule B," attached to Exhibit 4, filed with the petition in this case? A. You refer to——

Q. The list on page 16?

967 Mr. Warren: Of the Lehigh Valley Coal Sales answer?

A. Yes.

Q. Have you with you these original deeds from the Lehigh Valley Coal Company to the parties mentioned in Schedule B, attached to the Government Exhibit No. 4? A. I cannot testify to that. It may be and it may not. You will have to get the secretary back for that, I should think, or somebody else. I don't have the cus-
968 tody of those papers, and I don't know whether they are originals or not.

Q. Are you familiar with these premises and the uses to which they are put? A. In a general way, yes.

Q. Did the lessees prior to the formation of the Lehigh Valley Coal Sales Company purchase their coal from the Lehigh Valley Coal Company, the lessor? A. At least part of it, I cannot say how much.

Q. I mean anthracite coal? A. Yes, sir.

Q. Look at the paper which is handed to you by counsel for the Lehigh Valley Coal Sales Company, being a lease or agreement, dated the 8th day of February, 1911, between the Lehigh Valley Coal Company and Albert H. Mowry for a tract of land located at Oswego, Oswego County, New York, lying between Water Street and the Oswego River, I find the following covenant: "Tenth——" 969

Mr. Warren: I object to that unless you offer it. I object to counsel reading from a document which is not in evidence. 970

Q. (Reading):

"Tenth—It is distinctly understood and agreed and made a covenant of this lease that the said lessee shall and will purchase from the said lessor at its circular price all the anthracite coal dealt in and handled by the said lessee on the premises herein described during the continuance of this lease, and the said lessee agrees not to deal in or handle directly or indirectly any 971 anthracite coal on the premises herein described except anthracite coal purchased from the lessor as aforesaid. The said lessee further agrees to purchase from the Lehigh Valley Coal Company a minimum of 6,000 tons of anthracite coal in each year during the continuance of this lease."

Were you aware of the existence of such a covenant in this lease?

Mr. Warren: I object to that. I haven't the 972 slightest objection to counsel offering any document in evidence and reading so much of this as he desires into this record and asking any question with respect thereto, but I object to any reading from any document not offered in evidence on the ground that it is clearly incompetent as well as improper.

973 Q. What is your answer, Mr. Evans? A. I am not sure that I was or not. I may have understood in a general way that they would buy coal from us.

Q. You had understood that? A. Yes.

Q. And did they do so? A. They purchased some coal, yes. As to whether they purchased all or not I cannot say. I don't think we ever checked it up.

Mr. Warren: You are speaking now of conditions prior to the organization of the Sales Company?

974 The Witness: Yes, sir.

Q. At the organization of the Lehigh Valley Coal Sales Company as lessee under this deed did Albert H. Mowry purchased his anthracite coal from the Lehigh Valley Coal Sales Company? A. Mr. Mowry is dead. I don't recall the exact date of his death, but I am of the opinion that he purchased some coal from the Coal Sales Company.

Q. What became of these premises upon the death of 975 Mr. Mowry? A. They were leased to Mr. W. A. Dougherty.

Q. By whom? A. By the Lehigh Valley Coal Sales Company.

William L. Summers, called as a witness on behalf of the petitioner, being duly sworn, testified as follows:

976 Direct Examination by Mr. Machen:

Q. What is your residence and occupation? A. Residence, 14 Amherst Street, East Orange. Auditor of the Lehigh Valley Coal Sales Company.

Q. How long have you held this position? A. Since the incorporation of the Company, March, 1912.

Q. What was your occupation previous to that? A. I was auditor of sales of the Lehigh Valley Coal Company.

Q. How long had you been connected with the Lehigh Valley Coal Company? A. I was connected with the Lehigh Valley Coal Company since 1893. 977

Q. In what capacity? A. Various capacities; clerical, commencing with clerical and——

Q. Please look at the paper which I now hand you and file in evidence with the Examiner marked **Government Exhibit No. 60**, which purports to be an income account of the Lehigh Valley Coal Sales Company for the year ending March 31, 1914, and for the year ending March 31, 1913, and state whether or not it was prepared under your direction from the books of the Sales Company, and if so, whether it is correct? A. Yes, that is correct. 978

Q. Please look at the paper which I now hand you, which purports to be a balance sheet of the Lehigh Valley Coal Sales Company as of March 31, 1912, and filed with the Examiner as **Government Exhibit No. 61**, and state whether or not the same is prepared under your direction, and if so whether it is a correct transcript or compilation from the books of the Company? A. I would like to verify that with the books. That was not prepared under my jurisdiction. 979

Mr. Warren: Whose was it?

The Witness: I think Mr. Wilson made that up.

NOTE: It is admitted that this paper is a correct transcript from the books of the Company.

Q. Please look at the paper which I now hand you and file in evidence with the Examiner marked **Government Exhibit No. 62**, being a balance sheet of the Lehigh Valley Coal Sales Company as of March 31, 1914, and state whether the same was prepared under your direction, and if correct in accordance with the books of the Company? A. Yes, that is correct. 980

Q. Referring to the income account of the Lehigh Valley Coal Sales Company, **Government Exhibit No. 60**, does the actual coal sales include sales of bituminous coal as well as anthracite coal? A. The first item, yes, sir.

981 Q. Other income, under the head of other income in **Exhibit No. 60** we find in the year ending March 31, 1914, $277,257, and in the year ending March 31, 1913, $241,-110, and it is stated that this entry includes "commissions, etc.," what do you mean by "commissions, etc."? A. Commissions received from the sale of coal. We sell G. B. Markle & Company's coal on commission. We get the commission for that coal and we include it in that item. And then from bank balance.

Q. Is the G. B. Markle Coal Company the only anthra-
982 cite coal which the Lehigh Valley Coal Sales Company handles on commission? A. Not during that period.

Q. I don't quite gather your meaning? A. We had other commission accounts besides G. B. Markle last year.

Q. But not the year ending March 31, 1913? A. No.

Q. How much of this item is commission on Markle coal? A. That I could not say offhand; I would like to look it up.

Q. Is the contract for the sale of Markle coal on commission a profitable contract for the Lehigh Valley Coal
983 Sales Company? A. Yes.

Q. The commission for selling Markle coal I believe is 12½ cents a ton, isn't it? A. Yes.

Q. How much of that 12½ cents is profit and how much represents the cost of handling on commission; are you able to say or able to give an approximate answer? A. No. I would have to figure that out. Take the total tonnage sold at the different agencies and arrive at an approximate figure I would have to work it out on a percentage basis according to the total tonnage
984 mined by the different agencies, including our own coal, and Markle's coal find out what the expenses were and arrive at an average. That I could not say now. I would have to work that out. As to the actual expense of selling one coal or the other, I can't say offhand.

Q. Of course, you are able to sell Markle's coal more cheaply than if that were the only coal you mined, because you have the selling force, have you not, which is so that the expenses are not as great as they would be—I mean to say some of the expenses would run on any-

how, even if you did not handle Markle's coal? A. Certainly; we would have fixed charges, fixed rentals. 985

Q. And salaries and so forth? A. Yes, sir.

Q. And they would be in many instances no less if you did not handle Markle's coal than if you did handle it?

Mr. Warren: I object to that unless the witness is shown to have knowledge on the subject; unless he is shown to have some knowledge of the distribution of the expense account. I object to it.

986

Q. Answer the question. (Question read) A. The overhead charges would be about the same.

Q. What is the average expense of selling or cost of selling a ton of coal; are you able to give us an approximation? A. I could not say offhand.

Q. 10 cents a ton, 5 cents a ton? A. Are you speaking now as a whole; all the agencies or one particular agency?

Q. No, I am speaking of it as a whole, including Markle coal, and including the coal bought from the Lehigh Valley Coal Company, and all coal? 987

Mr. Warren: I object to the question until the witness is shown to have made investigation for the purpose of answering the question, or that he has charge of that branch of the Company's business, to justify the inquiry. In calling for a conclusion or guess of the witness I submit is improper as well as incompetent.

A. I am unable to say what the average would be. 988

Q. Could you figure it out? A. I could figure it out.

Q. I would like to know, if you can give us it briefly, what you estimate to be the amount of profit on the sale of the Markle coal and what you estimate to be the average cost of selling a ton of coal?

Mr. Warren: If the Government's counsel insists on the question and will indicate to the witness, the period he desires covered, or a little more definitely the space, I will ask the witness to

989 do everything in his power to accommodate the counsel, but such a roving, indefinite statement as that I submit gets nowhere, and I object to it.

Q. Has there been any change in the average cost of selling in the last few years?

Mr. Warren: I object to that unless the witness is shown to have some knowledge on the subject which the counsel for the government does not ask him as to any of these matters.

990

Answer the question Mr. Summers. A. What years have you reference to?

Q. The last two years I said; the last five or six years? A. I would not have any knowledge of the cost prior to March, 1912.

Q. You would not? A. No, sir.

Q. The question then, the last question which I put to you, is understood to relate only to the time which has elapsed since March, 1912? A. You want the profits
991 from the sale of Markle's coal from 1912?

Q. Yes. A. That would be for two years, 1912 and 1913.

Q. For the fiscal year——

Mr. Warren: Practically the two years of the business from April 1st, 1912, to April 1st, 1914.

The Witness: And the average cost of selling all coal during that period?

992 Q. Yes. I don't want to go into great minutiae, I only want an approximation if you are able to give it from your books and papers? A. The books do not show any separation in the expense between the cost of selling Markle's coal and anthracite coal.

Mr. Warren: Is it not a fact that what the books show would be the evidence of your expenditures in connection with salaries of each agent and commission to agents, if so be there are, for handling your entire product, merchan-

dizing the coal, which is your business, is that right? 993

The Witness: Yes, sir.

Q. You would simply divide that by the number of tons sold? A. Yes, I can give you the average cost of selling per ton all coal.

Q. Well, let us have that. Of course, that would be exclusive of freight? A. Freight does not figure in the expense.

Mr. Warren: That would not be exclusive of your expenditures of all kinds, salary, office, freight and salaries. 994

Q. How do you make up the statement for accounting and selling coal which appears in income account of **Government Exhibit No. 60**? A. That is composed of all the expenses at the retail yards, storage plant and salaries of officers and rents of offices and traveling expenses and all incidental expenses.

Q. And dividing that by the number of tons sold you could get the cost net, could you? A. That would be included in the cost of selling and handling, and handling over the docks. 995

Q. That is what I mean by the average cost of selling and handling, that is what I have asked you to get for us, if you can do so? A. Yes, sir.

Q. Now, as to the Markle coal, how would you arrive at the profits? A. I don't know what the commission on the Markle coal is. I know it is a fixed commission of 12½ cents a ton, but I don't know whether it would be correct to take the general average for the cost of selling and handling all coal because that might include some expense at some points where Markle's coal was not affected. 996

Q. If you will be good enough to look at your books, if you can do so before the next session of the Examiner, make us an estimate as to the profit on the Markle coal according to the best method you can devise? A. Yes.

997 Q. Does the Lehigh Valley Sales Company make a profit on the sales contracts enumerated in Schedule A attached to **Government's Exhibit No. 3,** filed with the petition? A. Some of these sales contracts are not in effect now. Take this Olney and Payne of Pawtucket.

Q. Well, such of them as are in effect? A. As a whole, yes, sir.

Q. They are profitable contracts? A. Yes, sir.

Q. And it is the profit from these contracts, among other things, which has enabled the Coal Sales Com-
998 pany to earn a profit and declare the dividends shown on the income account Government Exhibit No. 60? A. You say these contracts taken in conjunction with their own coal?

Q. Yes, sir. A. Yes, sir.

Q. Under what item in the income account do the profits on these contracts fall? A. Profits on anthracite coal and bituminous. (After examining the paper). The profits from operation and other income, the net profits.

999 Cross-Examination by Mr. Warren:

Q. Mr. Summers, referring to sales contract Schedule A in Government's Exhibit No. 3, before you, they, of course, form a small part of the merchandizing of your Company, as a whole I mean? A. Oh, yes, very immaterially.

Q. And you are not now prepared to say to just what extent, if any, any one of these particlar contracts has or has not been profitable in and of itself, I mean, are
1000 you? A. Not from individual contracts, no, sir.

Q. And when you say that they have been profitable what you mean to say is the general mechandizing business, which includes these contracts, or such of them as are now in force has been profitable as evidenced by your income account? A. For everything, the operations of the Company as a whole, and not one individual contract.

Q. And you are not prepared to say that these particular contracts in and of themselves have been profitable, are you? A. No, sir, I would not.

Q. Since March 1, 1912, have you had any employ- 1001
ment of any kind in any way, shape, form or manner with the Lehigh Valley Coal Company? A. In no way whatever, sir.

Q. Or the Lehigh Valley Railroad Company? A. No, sir.

Q. Or Coxe Brothers & Company, Incorporated? A. No, sir.

Q. Or any company except the Lehigh Valley Coal Sales Company? A. No, sir.

Q. To that you have given your undivided attention? 1002
A. I have.

William J. Burton, recalled:

Re-Direct Examination by Mr. Machen:

Q. Please look at the documents which I now hand you purporting to be leases from the Lehigh Valley Coal Company to the various lessees, the leases being nine in number, and state whether or not they are now among 1003
the records of the Lehigh Valley Coal Sales Company? A. Yes, sir; they are part of the records of the Coal Sales Company.

Q. Please look at the first of these leases, namely the lease from the Lehigh Valley Coal Company to the Yates-Lehigh Coal Company covering a tract of land on Sycamore and Walden Avenue in Buffalo, New York, dated April 1st, 1909, and read the eleventh paragraph of said lease in evidence? A. (Reading):

> "Eleventh. The lessee agrees to purchase from 1004
> the Lehigh Valley Coal Company all the anthracite coal handled or sold through this yard or trestle."

Q. Won't you also read the eighth paragraph? A. (Reading)

> "Eighth. If the said lessee shall violate any covenant of this lease, or if the said premises shall be used for any other purpose than as above

1005 stated, or if the said premises shall become vacant during the said term, or in the event of the termination of this lease by expiration of the term, or after notice, the lessor may re-enter upon the demised premises as of its first and former estate and may put out and remove the lessee from the same without further notice and without any liability to the said lessee or to anyone for so doing."

1006 Q. Will you also read the first sentence of the sixth paragraph of this lease? A. (Reading):

"Sixth. The lessor expressly reserves the right to terminate this lease upon written notice of not less than ninety (90) days prior to April 1st of any year with or without assigning any reason therefor."

Q. Is this lease still in effect? A. I am not sure; I don't know.

1007 Q. Is this one of the leases mentioned in Schedule B attached to **Government Exhibit No. 4**, filed with the petition? A. (After examination) Yes. It appears to be.

Q. Please look at the lease dated May 22, 1909, between the Lehigh Valley Coal Company and Milton E. Robinson Coal Company, covering the premises at the southwest corner of 59th Street and Wallace Street in the City of Chicago, Illinois, being one of the nine leases which you have just identified, and read the eighth paragraph thereof? A. (Reading)

1008 "Eighth. The said lessee in consideration of the low rental herein reserved, convenants and agrees during the term of this lease to purchase from the lessor herein all anthracite coal sold or handled by the said lessee on the premises herein demised, or in the City of Chicago, or its vicinity, and agrees to pay promptly upon demand all bills of the said lessor for coal so purchased from it."

Q. Does this lease contain a clause or condition of forfeiture in connection with the violation by the lessee of

any covenant in the lease; I refer you to tenth paragraph. (Reading) 1009

Mr. Warren: Object to the evidence, because the lease is not offered.

Q. Read the paragraph?

Mr. Warren: I object to that; it has not been offered.

A. (Reading)

1010

"Tenth. If the said lessee shall violate any covenant of this lease, or if the said premises shall be used for any other purpose than as above stated, or if the said premises shall become vacant during the said term, or in the event of the termination of this lease by expiration of the term, or after notice as aforesaid, the lessor may reenter upon the demised premises as of its first and former estate and may put out and remove the lessee from the same without further notice and without any liability to the said lessee or to 1011 anyone for so doing."

Q. For what term was this lease? A. From April 11, 1909, to March 31, 1912.

Q. Will you please look at the sixth paragraph of said lease and read the first sentence thereof? A. (Reading)

"Sixth. If the lessor shall permit the lessee to remain in possession of the above premises after the expiration of the above stated term, then the said lessee shall occupy said premises subject to 1012 all the terms, covenants, and conditions hereof, subject to the right of the lessor to terminate this lease at any time after the expiration of the stated term upon giving thirty (30) days notice in writing to the lessee."

Q. Please refer to the document which I now hand you, taken from among your records and state whether or not the leasehold in the lease from which you have

1013 just read was assigned to the Lill-Robinson Coal Company? A. I think it is.

Q. Was it one of the leases mentioned in Schedule B attached to the Government Exhibit No. 4? A. Seems to be, yes, sir.

Q. Please refer to the answer of Lehigh Valley Coal Sales Company, pages 16 and 17, and state whether or not this lease is still in effect? A. Apparently not.

Q. Look at the lease of the premises from the Lehigh Valley Coal Sales Company to Bickett Coal & Coke
1014 Company, dated April 1st, 1912, referred to on page 17 of the answer of the Lehigh Valley Coal Sales Company, and read the seventh paragraph thereof? A. (Reading):

> "Seventh: The said lessee in consideration of the low rental herein reserved, covenants and agrees during the term of this lease to purchase from the lessor herein all anthracite coal sold or handled by the said lessee on the premises demised, guaranteed not to be less than fifteen thou-
> 1015 sand (15,000) net tons per year, and agrees to pay promptly on demand all bills of said lessor for coal so purchased from it."

Q. Please look at the eighth paragraph of this lease, and state whether or not it contains provision that if the lessee shall cease to handle the coal of the lessor on said demised premises for any cause whatsoever, then the current rent shall immediately become due and payable and the said term shall immediately terminate,
1016 and the said lessor shall have the right to enter immediately upon the said premises and put out and remove the said lessee? A. That seems to be a part of the eighth clause.

Q. Please look at the paper which I now hand you, and state whether it is the lease from the Lehigh Valley Coal Company to Frank Dwyer of the premises known as the Geneva Trestle, Geneva, New York, mentioned on page 55 of the petition, and also on page 16 of the Lehigh Valley Coal Sales Company? A. That seems to be the same.

Q. Look at this lease and read the tenth paragraph thereof? A. (Reading): 1017

"Tenth. It is distinctly understood and agreed by and between the parties hereto that the lessee covenants, agrees and guarantees to purchase from the lessor herein all the anthracite coal sold or handled by the said lessee in the conduct of his business in the City of Geneva and vicinity during the continuance of this lease, or any renewal thereof. If the lessee shall fail to so purchase all his coal from the said lessor the lessor 1018 shall have the right to immediately terminate and cancel this lease without notifying the said lessee of its intention so to do, anything herein contained to the contrary notwithstanding."

Q. Is this lease on a printed form? A. Partly printed and partly typewritten.

Q. Is the paragraph which you have just read printed or typewritten? A. Typewritten.

Q. Attached to it as a typewritten slip? A. Yes, 1019 attached to it as a typewritten slip.

Q. Please look at the paper which I now hand you, being one of the leases which you have just identified as a part of the records of your Company, and state whether or not it is the lease from the Lehigh Valley Coal Company to the Carnegie Fuel Company, covering the Western Avenue yard, Minneapolis, Minnesota, referred to on page 16 of the answer of the Lehigh Valley Coal Sales Company, and in page 55 of the petition? A. It seems to be the same.

Q. Please read the ninth paragraph of this lease? A. 1020 (Reading):

"Ninth. The Fuel Company further agrees that it will purchase exclusively from said Coal Company all anthracite or hard coal which said Fuel Company shall require or may be able to use in its business, at the above described premises, and that it will not purchase from any other dealer any anthracite or hard coal for its said

1021 business during the existence of this lease and agreement, or any extension thereof."

Q. Does this lease contain a provision for forfeiture and reentry in case of the violation by the lessee of any of the covenants in the lease? A. (After examination). Yes.

RECESS UNTIL 2.15 P. M.

1022 (AFTER RECESS.)

William J. Burton, recalled:

Re-Direct Examination continued by Mr. Machen:

Q. Mr. Burton, look at the papers which I now hand you, please state whether the same are or are not the leases from the Lehigh Valley Coal Company to the Flour City Fuel & Transfer Company of premises known as the Harrison Street Yard, Minneapolis, Minn.; to A. H. Mowry, of Oswego Yard, Oswego, N. Y.;
1023 to the Carnegie Fuel Company, of Como Avenue Yard, St. Paul, Minn.; to the Dalton Coal Company, of the State Street Yard, Syracuse, N. Y.; and to the Dawson Coal Company of the Magnolia Street Yard, Syracuse, N. Y., which are mentioned on page 16 of the answer of the Lehigh Valley Coal Sales Company, and on page 55 of the petition? A. They are the same, except the one to the Dalton Coal Company is Thomas W. Dalton in the lease itself.

Q. Without going over each of these leases, one by
1024 one, please state whether each of them does not contain a covenant on the part of the lessee to purchase all the anthracite coal required by the lessee from the Lehigh Valley Coal Company? A. I could not tell that without going through them and looking at them.

Q. Look at them and see.

Mr. Warren: If you say they do, I will admit it. Won't that save time?

Mr. Machen: If everybody else will admit it.

Mr. Boles: I will admit it.

A. Yes. 1025

Q. Read the third paragraph of the first of these leases; that is, the lease to the Flour City Fuel & Transfer Company? A. (Reading):

"Third: That the said second party shall during the existence of this agreement purchase all of the anthracite coal required by it, for use or sale, from the yard before described, from the first party hereto, the prices for the same to be the usual prices current for coal in carload lots to dealers in similar coal at this or similar 1026 markets."

Q. Hasn't each of these leases from which you have read in evidence attached to it an assignment or transfer in substantially the same form as that annexed to the lease to the Flour City Fuel & Transfer Company, a transfer from the Lehigh Valley Coal Company to the Lehigh Valley Coal Sales Company? A. Yes.

Q. Read one of those assignments? A. (Reading):

"For value received, the Lehigh Valley Coal 1027 Company, the lessor in a certain lease attached hereto, namely, lease dated July 5, 1910, to the Flour City Fuel & Transfer Company, covering premises in Minneapolis, Hennepin County, Minnesota, known as Harrison Street Coal Yard, hereby assigns, transfers and sets over to the Lehigh Valley Coal Sales Company, the within lease and all its rights thereunder, subject, however, to the terms and conditions of a certain contract, dated March 1, 1912, entered 1028 into by and between the Lehigh Valley Coal Company, and the Lehigh Valley Coal Sales Company. Dated at New York, this first day of March, 1912, The Lehigh Valley Coal Company, By E. B. Thomas, President. Attest: H. J. McQuade, Secretary." Seal of the Lehigh Valley Coal Company.

Q. Please look at the paper which I now hand you and state whether the same is the lease of the Oswego

1029 Yard to W. A. Dougherty, mentioned at the top of page 17 of the answer of the Lehigh Valley Coal Sales Company, the lease covering premises formerly leased to A. H. Mowry? A. This seems to be the same.

Q. What is the date of that lease? A. March 31, 1913.

Q. Read the 10th paragraph of this lease. A. (Reading):

"Tenth: It is distinctly understood and agreed and made a covenant of this lease that the said lessee shall and will purchase from the said
1030 lessor at its circular price all the anthracite coal dealt in and handled by the said lessee on the premises herein described during the continuance of this lease. And the said lessee agrees not to deal in or handle, directly or indirectly, any anthracite coal on the premises herein described except anthracite coal purchased from the lessor as aforesaid; the said lessee further agrees to purchase from the Lehigh Valley Coal Sales Company a minimum of 6,000 tons of anthracite
1031 coal in each year during the continuance of this lease. It is further understood and agreed and made a covenant of this lease that the said lessee shall pay for all coal purchased on the 15th day of the month following the month in which shipment is made."

Mr. Machen: We offer in evidence the lease from the Lehigh Valley Coal Company to Thomas W. Dalton, dated April 27, 1910, being a sample of these leases, and I ask that a copy be made
1032 and filed with the exhibits.

(Received in evidence and marked **Government Exhibit No. 63.**)

Q. With the exception of the three leases mentioned at the top of page 17 of the answer of the Coal Sales Company, are all of these leases still in effect, and are payments of rent thereunder being made to the Lehigh Valley Coal Sales Company? A. I am not sure whether they are all in effect or not, and as to payments of rent I don't know anything about that.

Q. Who attends to that? A. The auditor would be the 1033
man who would be able to speak definitely about it.

Q. Mr. Summers? A. Yes.

Q. Do you know as to the amount of sales made to each of these tenants? A. No, sir.

Q. That would also fall within Mr. Summers' jurisdiction, would it? A. Very likely.

Mr. Warren: Isn't it a fact that it falls within the jurisdiction of the sales agent?

The Witness: They naturally would know about it. Whether Mr. Summers would also 1034
know I am only just assuming he would.

Re-Cross Examination by Mr. Warren:

Q. Mr. Burton, since March 1, 1912, have you had any employment of any kind with the Lehigh Valley Coal Company? A. No, sir.

Q. In any capacity whatever? A. None whatever.

Q. Or the Lehigh Valley Railroad Company? A. No, none whatever.

Q. Or Coxe Brothers & Company, Incorporated? A. 1035
No, sir; none.

Q. Or any other concern other than the Lehigh Valley Coal Sales Company? A. No concern whatever except the Lehigh Valley Coal Sales Company.

Q. To which you devote your entire time? A. Yes, sir.

Q. And are you a salaried official as the present secretary and treasurer? A. Yes, sir.

Q. Do you know how many offices your company occupy, and where they are A. I can tell you approxi- 1036
mately. I think every one of them. I have nothing with me, but if you want me to give you a list, I can probably do it.

Q. I will defer that then for further examination. Counsel for the Government called your attention to Exhibit No. 59, which has upon it a flag or a device used by the Lehigh Valley Coal Sales Company. I show it to you. Have you ever seen the device, if there be such a one, of the Lehigh Valley Railroad Company? A. I have

1037 seen something like some device of that sort on a time table, but it differs from this.

Q. I show you a card which purports to be the Lehigh Valley Railroad Company list of offices, agents station, and so forth, and purports to be dated November 1, 1910, at the top of which is a flag; do you see it? A. Yes.

Mr. Warren: I am going to ask that it be identified as the **Lehigh Valley Coal Sales Company Exhibit No. 2.**

(Marked Lehigh Valley Coal Sales Company
1038 Exhibit No. 2 for identification.)

Q. Have you ever seen that kind of a device on any of the railroad cars or time tables or other records or documents or papers of the Lehigh Valley Railroad Company? A. I have seen some such emblem on a time table. It had a laurel wreath around it, I think, but I don't recall seeing it elsewhere.

Q. It had a laurel wreath around it? A. Yes.

Q. This one hasn't got the laurel wreath on it, has it?
1039 A. No, it has not.

Q. Now, your device for the Sales Company has no laurel wreath on it, has it? A. No, sir.

Q. Nor is it a flag, is it? A. No; it is a solid block.

Q. The laurel wreath design that you are speaking of is such as there appears on what purports to be a time table of the Lehigh Valley Railroad Company is it not? A. Yes, that is the one I had in mind.

Q. Inside of which is a flag that looks like the flag on Exhibit No. 2 of the Lehigh Valley Coal Sales Company
1040 exhibit. Of course, that is not the color? A. And has no wreath upon it.

Q. That is, No. 2 has no wreath? A. No.

Q. But the question was, that the flag inside of the wreath is like the flag on the exhibit, other than it is not colored? A. Yes, exactly.

Q. In the list of the leases to which your attention has been called, appearing upon pages 16 and 17 of the Lehigh Valley Coal Sales Company answer or in schedule "B" upon page 55 of the Government's petition,

there is no so-called routing clause, or any other provi- 1041
sion with respect to the matters of transportation of coal; isn't that true, and please look at that to see? A. Yes, that is so.

Q. And the form of the assignment by the Lehigh Valley Coal Sales Company, which you read at the request of counsel for the Government, as one lease, I understood you to say was similar in its form as all the leases which appear upon page 16, is that right? A. That appears to be correct.

Q. If you know, will you tell us whether all of these 1042
leases are not leases of coal yards and places for the storage and holding and handling of coal? A. Yes, they are.

Q. And they were taken over by the Coal Sales Company March 1, 1912, as being among the coal yards which prior to that time were either owned as the land or leased by the Coal Company from others, and utilized by them in connection with the selling agencies and sales department of that company prior to March 1, 1912? A. Yes, that is correct.

Q. In order, therefore, for the Lehigh Valley Coal 1043
Company to cease merchandising coal at the places and premises and localities covered by these various leases on the last day of February, 1912, and to make disposition of such properties associated with their merchandising of anthracite coal prior to that date, these leases representing holdings of that company, are of various persons to whom that company had leased the premises so taken over by the Lehigh Valley Coal Sales Company? A. Yes, sir.

Q. Now, at that time, that is the say, prior to March 1044
1, 1912, and immediately prior to March 1, 1912, what did you say your position was, and with what company? A. I was assistant secretary of the Lehigh Valley Coal Company, and Coxe Brothers & Company, Incorporated.

Q. And you had no relation or connection with the selling agencies or the sales department of the Lehigh Valley Coal Company, which existed prior to March 1, 1912, did you? A. No, sir.

1045 Q. Or any association with the transactions of the merchandising of coal by the Lehigh Valley Coal Company prior to March 1, 1912? A. None whatever.

Q. You had no knowledge, therefore, of the utilization of the premises described in these leases or of the methods of doing business as between the lessor and the lessee prior to March 1, 1912, the enforcement, or otherwise of the clauses that have been called to your attention by counsel for the Government, or the amount of coal purchased from the Lehigh Valley Coal Com-
1046 pany prior to March 1, 1912, or from any person other than that company, have you? A. No, sir.

Q. You appear here simply as the custodian of these papers? A. Yes, that is correct.

Q. When you spoke this morning of making certain reports to certain States, I take it you meant certain statements which you gave to the authorities of certain States in order to comply with certain State regulations or laws to enable your company to engage in the merchandising of coal in those States; am I right about
1047 that? A. That is what I meant.

Re-Re-Direct Examination by Mr. Machen:

Q. When you stated in answer to Mr. Warren's questions that these leases contained no so-called shipping or routing clause, you meant, I presume, merely that these particular documents, which you had before you, contain no such clause, isn't that it? A. Yes, that is so.

Q. You did not mean to state that by virtue of some other contract taken in connection with these leases,
1048 the lessees would be bound to acquire coal via the Lehigh Valley Railroad?

Mr. Warren: I object, there being no proof of any contract.

Q. I am just asking you whether you meant that? A. I don't quite get the tenor of what you mean; I don't quite understand that question.

Q. It appears from **Government Exhibit No. 14,** that in or about the year 1899, a contract was entered into

between the Lehigh Valley Railroad Company and the 1049
Lehigh Valley Coal Company, whereby the latter acknowledges that ever since its incorporation it had been under obligation to ship its coal over the Lehigh Valley Railroad to the exclusion of all other means of transportation, and, further, in recognition of said obligation covenanted and agreed to ship all coal mined from lands or mines leased or controlled by the said party of the third part over the railroad of the said party of the second part, or over other railroads or highways leased or operated or controlled by it to the 1050
said party of the second part—that is, the railroad company—and over connecting or forwarding transportation lines preferred by it, the said party of the second part, or railroad company, to the exclusion of all other means of transportation to the points of ultimate destination. Now, I want to ask you whether you meant merely that particular document which you had before you contains no shipping or routing clause? A. That is what I meant.

Mr. Warren: That is what I asked you, 1051
wasn't it?

The Witness: Yes, sir.

Mr. Warren: I want to object to the reading by counsel and the incorporation in the question of what you call a contract of date 1899, when it appears he is reading from an extract from the minutes of the railroad company, which I have no doubt was offered in evidence, but which does not show the execution of any such paper at all; and moreover I object because it is drawn prior 1052
to the organization of the Lehigh Valley Coal Sales Company and the contract of March 1, 1912, between that company and the Lehigh Valley Coal Company.

Q. You said that these leases were leases of coal yards, the leases which you testified to on direct examination? A. Yes, sir.

Q. Isn't it true that such of those coal yards as are situated in towns reached by the Lehigh Valley Rail-

1053 road are on the line of the Lehigh Valley Railroad; that is to say, are directly on the line of the Lehigh Valley Railroad?

Mr. Warren: I object to that unless the witness is shown to have knowledge.

A. I have no knowledge of that.

1054 **William T. Grier,** called on behalf of the petitioner, being duly sworn, testified as follows:

Direct Examination by Mr. Machen:

Q. What is your name, residence and occupation, Mr. Grier? A. My name is William T. Grier; my occupation, General Coal and Freight Agent for the Lehigh Valley Railroad Company. My business address is 143 Liberty Street, New York.

Q. General Coal and Freight Agent? A. Yes.

1055 Q. How long have you held this position? A. That particular title since 1911.

Q. How long have you been connected with the Lehigh Valley Railroad? A. Since June, 1906.

Q. What was your occupation prior to that time? A. Prior to June, 1906?

Q. Yes. A. I was for six months general manager of the Delaware River & Union Railroad Company, and for seventeen years prior to that I had charge of the coal and freight business of the Beech Creek Division of the New York Central, and for seven years prior to

1056 that I was in the coal and freight department of the Philadelphia & Reading Railway.

Q. What are your duties as general freight agent? A. Supervision of the rates on coal and coke, and so far as merchandise freight is concerned, solicitation of business on the system between Sayre, Pa. and Newark Bay.

Q. Looking at the annual report of the Lehigh Valley Railroad Company for 1913, can you state what was the total number of tons of anthracite coal carried by

the railroad company during that year? A. Anthra- 1057
cite coal, net tons, 1913, 14,732,949 tons; bituminous coal and coke, 3,162,458 tons. I think it is more than likely that that last item, bituminous coal and coke, is included with the tonnage of Loyalsock or Bernice coal that originates near Bernice.

Q. Just a kind of semi-anthracite, isn't it? A. Yes, but they won't admit it; they claim it is anthracite.

Q. That is a small territory, but somewhat to the northwest of the Wyoming coal field, isn't it? A. That has produced between 400,000 and 500,000 tons a year. 1058

Q. Again referring to the Annual Report. These are net tons are they not? A. Yes.

Q. Do you know how much of this tonnage originated on the line of the Lehigh Valley Railroad, and how much on the line of connecting carriers? A. No, sir.

Q. You can easily ascertain that? A. I think the accounting department, of course, will show that.

Q. I understand you have general charge of the making of coal freight rates? A. Yes.

Q. Does the Lehigh Valley Railroad make any joint rates on anthracite coal with other railroads leading 0159
from the anthracite coal regions to tidewater? A. No, I don't think we do. There may possibly be one rate to Port Johnson in connection with the Central Railroad of New Jersey, but I am rather inclined to think that that has been cancelled.

Mr. Boles: You mean the rate applied on coal moving to tidewater?

Q. No, I meant isn't it the policy of the Lehigh Val- 1060
ley Railroad not to enter into joint rates with other anthracite coal carriers? A. That is not the statement you made, or question. Your question was at tidewater.

Q. Well, answer the question as I have explained it. A. That is, whether or not we make any joint rates on anthracite coal with any railroads originating anthracite coal themselves?

Q. Yes. A. Yes, sir; we do.

Q. Isn't it your policy not to make joint rates to points on your own line with orignating anthracite coal carriers? A. We have some such rates.

1061 Q. But they are few? A. Comparatively, yes.

Q. And the policy of the railroad is not to enter into such rates? A. The policy of the railroad is to avoid as far as possible any economic waste in the transportation of anthracite coal.

Q. Do you know Mr. Large? A. Yes.

Q. I will explain my reference to Mr. Large; isn't it the policy of the Pennsylvania Railroad to enter into joint rates with other carriers for anthracite coal on points of the line of the Pennsylvania Railroad? A. I
1062 would rather let them answer that themselves.

Q. Now, perhaps you might be able from your negotiations with them to state. A. The Pennsylvania Railroad had various policies according to the condition, and I would rather they testify themselves what their general practice is.

Q. Perhaps you would rather, but they are not on the stand and you are. What is the Bureau of Anthracite Coal statistics? A. As far as I know it is simply a bureau to put together in statement form the tonnage statistics of any year by the various anthracite roads.
1063 Q. What do you mean by the various anthracite roads? A. The Philadelphia & Reading Railroad, the Lehigh Valley, the Central Railroad of New Jersey, the Delaware, Lackawanna & Western, the Pennsylvania, the Erie Railroad, the New York, Ontario & Western, and the Delaware & Hudson.

Q. Are each of these roads engaged in carrying anthracite coal from the anthracite coal fields in Pennsylvania? A. The Lehigh Valley Railroad certainly is, and I think the others are.

1064 Q. When was the Bureau of Anthracite Coal Statistics formed, do you know? A. I really could not tell you. I don't know. It has been in existence for a long time.

Q. Who has charge of the Bureau now? A. The man's name now is Armstrong.

Q. By whom is he paid? A. I don't know.

Q. How large a proportion of the anthracite coal tonnage of the Lehigh Valley Railroad moves to tidewater at or near New York City? A. Well, I haven't those

figures right at my finger's end. Our tonnage over the Perth Amboy piers runs close on to 2,000,000 tons a year; but there is a considerable tonnage goes to Jersey City and is brought across the river in wagons on ferry boats; that tonnage I am not able to tell you what the amount of it is. 1065

Q. What difference is there between the anthracite coal rates to tidewater, to so-called upper ports, and at Perth Amboy and the lower ports? A. The usual differential is five cents a ton, but the Lackawanna Railroad, I believe, has reduced it in some instances to three cents and under the decision of the Interstate Commerce Commission it is about twenty cents per ton below the rates to the lower ports. 1066

Q. What do you mean by that? A. That is a decision made by the Interstate Commerce Commission, ordering a rate of $1.33 per gross ton to Hoboken, f. o. b.

Mr. Boles: That was only from one point of origin.

The Witness: Taylor, Pennsylvania.

Q. Do you mean the case which is reported in 24 I. C. C., reports, a copy of which opinion I show you? A. (After examination of paper). Yes. 1067

Q. Is there any difference between the rates on the Lehigh Valley Railroad to tidewater, f. o. b., Perth Amboy on anthracite coal from the Wyoming region, than from the Lehigh region? A. Yes.

Q. What is the difference? A. Fifteen cents a ton on prepared sizes, ten cents a ton on pea, and five on buckwheat, rice and barley the same.

Q. What is the rate in each case? A. The rate from the Wyoming region to Perth Amboy, f. o. b., on prepared sizes is $1.40 a gross ton; on pea coal it is $1.30 per gross ton; on buckwheat coal it is $1.15 per gross ton; rice and barley is $1.10. From the Lehigh region the rate is $1.55 per gross ton on prepared sizes; $1.40 on pea coal, $1.20 on buckwheat coal, and $1.10 on rice and barley. 1068

Q. To what is this difference due in the rates from the Wyoming and Lehigh regions? A. The present differ-

1069 ence is due to a decision of the Interstate Commerce Commission in the Meeker case.

Mr. Machen: We now offer in evidence the opinion of the Interstate Commerce Commission in the case of *Henry E. Meeker, et al* v. *the Lehigh Valley Railroad Company*, decided June 8, 1911, and also the further supplemental opinion in such case rendered May 7, 1912.

(Received in evidence and marked respectively **Government's Exhibits 64 and 65.**

1070 Mr. Machen: Being the opinions reported in 21 I. C. C. Reports, 129, and 23 I. C. C. Reports, 480.

Q. For how long a period of time did this order of the Interstate Commerce Commission remain in effect according to its terms? A. It went into effect, as I recollect, on October 17, 1911, and is still in effect.

Q. Didn't it expire after the expiration of two years, and wasn't there then a new tariff filed by the Lehigh
1071 Valley Railroad Company, restoring the rate which had originally been reduced by the Interstate Commerce Commission? A. Yes.

Q. Explain what you mean by still in effect? A. At the expiration of the two year order of the Interstate Commerce Commission we supplemented our tariff restoring the rate in effect prior to October 17, 1911, and the Commission suspended the tariff.

Mr. Boles: And the suspension is still in effect?

1072 The Witness: The suspension is effective, the result being that the present rates are the rates ordered by the Commission and still in effect.

Q. This order of the Commission then applied only to the rates from the Wyoming region to the Perth Amboy, f. o. b.? A. Yes.

Q. Who are the competitors of the Lehigh Valley Railroad in the anthracite coal transportation from the Lehigh region to tidewater? A. From the Lehigh region?

Q. Yes. A. Central Railroad of New Jersey. Do you 1073
mean as railroads or coal companies?

Q. As railroads. A. The Central Railroad of New Jersey, Lehigh and New England Railroad, the Philadelphia & Reading Railway, and the Pennsylvania Railroad.

Q. From what point does the Lehigh and New England reach the Lehigh coal region? A. At Hauto and the Panther Creek district.

Q. Does it run directly to the mines or does it there connect with some other line? A. It runs directly to 1074
the mines.

Q. By what company is the Lehigh and New England controlled? A. I understand the Lehigh Coal & Navigation Company.

Q. They own the entire capital stock, don't they? A. I don't know.

Q. That is the general impression? A. That is the general impression.

Q. Do all of these railroads charge the same rates for transportation from the Lehigh anthracite regions to tidewater at or near New York, f. o. b.? A. No, I don't 1075
think they do.

Q. What difference is there? A. I don't remember them all. The Pennsylvania rate to South Amboy is $1.40 on prepared sizes; I think their rate on buckwheat is $1.25, and the Lehigh & New England Railroad rates are on a parity with the rates of the Erie Railroad from the Wyoming region which I think start at $1.60 for prepared sizes to Undercliff or Edgewater, near Weehawken.

Q. What do other railroads charge for transportation 1076
from the Wyoming coal region to tidewater, other railroads than the Lehigh Valley charge for transportation of anthracite coal from the Wyoming coal region to tidewater and New York Harbor? A. The Lackawanna Railroad rate from Taylor in the Wyoming region is $1.33 per gross ton; from their other collieries in that district the rate is $1.58 a gross ton. I understand the rate of the Erie from that territory to Weehawken is $1.60 per gross ton; the New York, On-

1077 tario & Western Railroad, and the D. & H. being the same; the rates from the Central Railroad of New Jersey territory in the Wyoming region to Elizabethport. my recollection is, are $1.55 on prepared sizes; $1.40 on pea; $1.20 on buckwheat, and $1.10 on rice and barley.

Hearing adjourned until Tuesday, July 14th, 1914, at ten o'clock, A. M.

1078 New York, July 14, 1914.

Hearing resumed pursuant to adjournment.

APPEARANCES AS BEFORE.

Mr. Machen: I offer in evidence, marked Government Exhibit No. 66, the opinion of the Interstate Commerce Commission in the case of *Coxe Brothers & Company* v. *The Lehigh Valley Railroad Company*, decided March 13th, 1891.

Marked **Government Exhibit No. 66.**

1079 **Albert H. Armstrong**, called on behalf of the Petitioner, being first sworn, testified as follows:

Direct Examination by Mr. Machen:

Q. What is your residence and occupation, Mr. Armstrong? A. Chief of the Bureau of Anthracite Coal Statistics, Colwyn, near Philadelphia.

Q. What is the Bureau of Anthracite Coal Statistics? A. The Bureau of Anthracite Coal Statistics keeps a
1080 record of the shipments of anthracite coal over the various transporting roads and also reports the price of coal at New York Harbor tide.

Q. How long have you been connected with the Bureau? A. What do you mean, as head or—

Q. Yes; how long have you been head of the Bureau first? A. Since June, 1910.

Q. Is it your individual business, this Bureau? A. I would say it was, yes, sir.

Q. You have no partner or associate? A. No, sir.

Q. How did you acquire the business? A. Well, I just 1081
followed along in—I was right in the track of my predecessor, Mr. Ruley.

Q. Mr. William W. Ruley? A. Yes, sir.

Q. And is he dead, and if so when did he die? A. I think he died on the 5th of April, 1910.

Q. Had you been associated with him in the work of this so-called Bureau prior to his death? A. I acted as his stenographer.

Q. For how long a period of time? A. Since approximately—since '99; I don't remember just what month. 1082

Q. Does the sole business of the Bureau consist in furnishing statements of tonnage of anthracite coal shipped and furnishing tide water prices? A. Yes, along with various reports that might be asked for.

Q. Did you have anything to do with Mr. Ruley in preparing the exhibits which he furnished for use as evidence in the case of *United States v. Reading Company and others*, which was tried about four or five years ago? A. Yes, sir.

Q. I suppose those exhibits were correct? A. Yes, 1083
sir.

Q. Have you continued in the business of the Bureau in substantially the same form in which Mr. Ruley conducted it? A. Yes.

Q. To whom did you report the tide water sales? A. The coal companies.

Q. What coal companies, independent or the railroad coal companies or what? A. There are some independents that get it; I couldn't say what they use it for or whether or not they sell their coal on a royalty.

Q. From whom do you receive the information as to 1084
tide water prices? A. The coal companies.

Q. What coal companies, independent or railroad companies? A. The railroad coal companies.

Q. Which are they? A. The Philadelphia & Reading Coal & Iron, the Lehigh Valley Coal Sales, the Lehigh & Wilkes-Barre Coal Company, the D. L. & W. Coal Company, the Scranton Coal Company, the Hillside Coal & Iron and the Pennsylvania Coal.

1085 Q. The Hillside Coal & Iron and Pennsylvania Coal Company are owned by what railroad? A. I class that as one company.

Mr. Warren: Wait a moment, I object to that, as incompetent.

Q. Go ahead. A. I class that as one company, the Hillside Coal & Iron and Pennsylvania Coal.

Q. And belonging to what railroad? A. I couldn't say that it belonged to any railroad.

1086 Q. You know as a matter of fact what railroad controls those companies? A. I couldn't say. I don't know positively in regard to whom—as to the coal companies being owned by the railroads.

Q. It has been your business for how many years to collect anthracite coal statistics? A. June, 1910.

Q. And you say you collect information in railroad coal companies? A. Yes.

Q. And you don't know which railroads they are affiliated with? A. No. That is, I don't know anything

1087 about the stockholding of the companies or anything about that.

Q. I am not asking you that; I am asking you whether it is not a matter of common knowledge in Philadelphia as to what railroads the Hillside Coal & Iron Company and Pennsylvania Coal Company are connected with?

Mr. Wheaton: I desire an objection noted to that.

A. I could not answer that.

1088 Q. Didn't you tell me Saturday that the Erie Railroad Company owned the Hillside Coal & Iron Company and Pennsylvania Coal Company? A. They control it?

Q. No, owned it? A. I don't know that I did, no, sir.

Q. How about the Pennsylvania Railroad Company coal companies, do they report to you? A. No.

Q. Which are they? A. Do you mean the Susquehanna Coal Company you have reference to?

Q. Yes; I am asking you the question? A. The Susquehanna Coal Company.

Q. The Summit Branch Mining Company? A. No, 1089
they don't report to me.

Q. And the Mineral Railroad & Mining Company? A. No.

Q. They are all Pennsylvania Railroad Coal Companies? A. Yes.

Q. What railroad does the Scranton Company belong to? A. I don't know that it belongs to any railroad; it ships its coal over the New York, Ontario & Western.

Q. How do you determine what coal companies you get information from? A. The coal companies that I get 1090
the information from are companies that furnished it to Mr. Ruley when the thing was started.

Q. You simply continued. A. Yes.

Q. What railroad companies are the Philadelphia & Reading Coal & Iron Company affiliated with? A. I don't know that it is affiliated with any railroad.

Q. Don't you know that they have offices together? A. They have offices in the Reading terminal; as far as their connection with the Philadelphia & Reading Railway is concerned I don't know anything about that.

Q. What do you mean by you know nothing about it? 1091
A. I don't know about their connection with the Philadelphia & Reading.

Q. You mean you never saw a stock book? A. Never saw a stock book or anything of that kind.

Q. Have you with you a table showing the proportion of tonnages of tide water sales of anthracite coal reported to you by the various companies? A. I submitted that statement to you.

Mr. Warren: Is that for a particular month, 1092
Mr. Machen?

Mr. Machen: It is for the year ending June 30th, 1912, and the year ending June 30th, 1913. I now offer this in evidence.

Received in evidence and marked **Government Exhibits No. 67 and No. 68**, respectively.

Q. By whom are you paid for the various matters of information which you collect? A. The operating companies.

1093 Q. What do you mean by the operating companies? A. The companies that operate the mines.

Q. Railroad coal companies or independents, or—— A. Railroad coal companies. The Lehigh Valley Coal Company and Philadelphia & Reading Coal & Iron and so on. Do you want me to name the list over?

Q. The same list you mentioned before? A. Yes.

Q. You don't receive any pay from the independents? A. No, sir, other than I would say if a company wants the use of the average prices for March first and so on
1094 we furnish those prices to them at a nominal charge, merely to cover the expense of getting them up and postage and so on.

Q. Do you receive no pay for furnishing the tonnages of the various railroads? A. No.

Q. Coal carrying railroads? A. No.

Q. You do that gratuitously? A. Yes.

Q. To whom do you furnish that information? A. To the officers of the railroad interested in the coal end of the business.

Q. Do you, like Mr. Ruley, compile a statement show-
1095 ing the geographical distribution and so forth of tonnage? A. No.

Q. You gave that up? A. Yes.

Q. When did you abandon that? A. He has not issued a report on that since—1905, I believe the last one was gotten out for distribution.

Q. Do you get from each coal producing company a statement of the output of its various collieries during the year? A. No.

Q. Mr. Ruley testified that he used to do that; did he
1096 not? A. He got that in connection with the report which he issued to the United States Geological Survey at Washington.

Q. But you do not make any such report? A. No, sir.

Q. And don't give any such information? A. No, sir.

Q. Do you furnish any information to the Susquehanna Coal Company? A. I furnish the prices of coal at New York Harbor tide and also the tonnage reports.

Q. Do you receive any commission or other pay from them? A. We receive pay from them.

Q. The same as from the other railroad coal companies? A. Yes. 1097

Q. What are the coal carrying companies whose tonnage of anthracite coal you report? A. The Philadelphia & Reading Railway and Lehigh Valley Railroad, the Central Railroad of New Jersey, Delaware, Lackawanna & Western, Delaware & Hudson, Pennsylvania, Erie, New York, Ontario & Western.

Q. How about the New York, Susquehanna & Western? A. The New York, Susquehanna & Western is included in the Erie tonnage. 1098

Q. How about the Lehigh & New England? A. We don't report the Lehigh & New England as yet.

Q. Why not? A. It is a new road that has just started, and I expect to start reporting their tonnage beginning with January, 1915.

Q. How about the transportation of anthracite coal by water; do you make any report of that? A. We don't make any report of that.

Q. By canal, I mean? A. No.

Q. Why not? A. I only report the rail shipments. 1099

Q. Is the transportation by water large or small in comparison with the transportation by the railroads? A. Small.

Q. Insignificant? A. I should say yes.

Q. Please look at the papers which I now hand you, and offer in evidence, marked **Government Exhibits No. 69 and 70**, and state what they are? A. Exhibit No. 69 contains the shipments of anthracite up to June 30th, 1913.

Mr. Warren: From what year up to that time? 1100

The Witness: For the six months ending June 30th. Exhibit No. 70 shows the shipments of anthracite coal for the six months ending December, 1913.

Q. Have you brought with you a statement showing the general average of the New York tide water prices of anthracite coal during the last few years? A. I have not.

Q. You could easily prepare such a statement? A. Yes, sir.

1101 Q. Will you please prepare such a statement and file it with the Court? A. Is that the fiscal year or calendar year?

Q. You make them up by month, don't you? A. Yes.

Q. You had better make it up for months for the last five years; the monthly statements as you have them? A. You want the monthly statements from 1899 to date?

Q. Yes? A. Yes, sir.

Q. They are prepared by regions, aren't they? A. Yes.

1102 Q. These are the reports which you furnished to the railroad coal companies, are they? (Showing witness papers.) A. Yes, sir.

Cross-Examination by Mr. Boles:

Q. When you say railroad coal companies I suppose you are using that term in the general sense that you hear it around Philadelphia? A. Just in the sense to let him know what company I mean.

Q. What do you mean by railroad coal companies?

1103 A. I don't know that that specifies anything in particular.

Q. You mean that by common gossip the Lehigh Valley Railroad and the Lehigh Valley Coal Company are in some way said to be affiliated, is that the idea? A. Yes.

Q. But you don't know anything more than that? A. No, sir.

Q. Do you furnish any information at the present time to any department of the United States Government?

1104 A. I get up information for E. W. Parker, at Washington.

Q. Who is he? A. He is statistician in charge of the United States Geological Survey.

Q. Does he pay you for it? A. No, sir.

Q. What does he do with the information, do you know? A. He compiles it in a report which he issues for the production of coal.

Q. Is that a copy of one of such reports? (Showing witness paper.) A. Yes, sir.

Mr. Boles: I will ask that that be marked for identification, please. 1105

Marked **Lehigh Valley Railroad Company Exhibit No. 4**, for identification.

Q. What is the character of the statistics which you furnish to Mr. Parker? A. I furnish him the anthracite shipments according to regions.

Q. Counties? A. No.

Q. Different railroads? A. The Wyoming, Lehigh and Schuylkill regions; also shipments according to companies. 1106

Q. Do you furnish him with circular prices of anthracite at the mines for a particular period? A. No, sir.

Q. Do you make a distinction between the sizes and shipments in the statistics you furnish him? A. No, sir, only as to buckwheat No. 1 and larger sizes, and smaller than buckwheat No. 1, as given in that report for the various companies.

Q. What independent producers or so-called independent producers do you furnish tide water prices to? A. I have a mailing list; I could not name them offhand. 1107

Q. What number on it? A. About seven or eight of the independent.

Q. Did you prepare a statement showing the tonnage via all lines to New York Harbor with the proportion of both in tons and percentage shipped by the Lehigh Valley Coal Sales Company? A. I did.

Q. Is that it? (Showing witness paper.) A. That is it.

Q. Is that a correct statement? A. That is a correct statement. 1108

Mr. Boles: I will ask that that be marked for identification.

Marked **Lehigh Valley Railroad Company Exhibit No. 5** for identification.

By Mr. Wheaton:

Q. Mr. Armstrong, since March 1st, 1912, you have received no information from the Lehigh Valley Coal Company as to tide water prices, have you? A. No, sir.

1109 Cross-Examination by Mr. Warren:

Q. Mr. Armstrong, I understood you to say in answer to Government's counsel that having ascertained the average at Harbor points of the prices received you submitted them to what you called the Railroad Coal Companies; I understood you to say that? A. Yes.

Q. Do you not submit them to the Lehigh Valley Coal Sales Company since March 1st, 1912? A. Yes, sir.

Q. You have no information of that being a railroad coal company, have you? A. No, sir.

1110 Q. Then you did not mean to say that your information is only sent to what he calls the railroad coal companies; you sent it to other companies? A. I sent it to anyone who was interested in those prices; there is nothing confidential about them.

Q. And you sent it to the Lehigh Valley Coal Sales Company and the Lehigh Valley Coal Sales Company in return sent you a statement of its tonnage each month at Harbor points, does it not? A. Yes.

Q. So that that which you send to the Lehigh Valley

1111 Coal Sales Company, to illustrate, is a statement of the average of the various sizes of anthracite shipped from all the three regions as evidenced by the sales of the previous month at Harbor points? A. Yes.

Q. And you have nothing to do with the averages received for the sale of anthracite at any other place in the United States or Canada other than New York Harbor points? A. No sir.

Q. Now **Government Exhibit No. 69** (showing witness paper), it may be perfectly plain to the Government's counsel and to you, but I would like to ask what that

1112 percent means—I call your attention to Exhibit No. 69, where you are speaking of shipments of anthracite coal by the Lehigh Valley Railroad Company, for the first six months of the year 1913, and you say actual shipments, and then you say buckwheat No. 1 and larger sizes and you indicate a shipment of over 5,000,000 tons, do you not? A. Yes.

Q. And then you say 90.08. A. That is the proportion of buckwheat No. 1 and larger sizes, of the total shipments.

Q. Of that railroad to tide water or for that period 1113
of six months? A. No, that is not the tide water; that is the shipment as it leaves the mine; that has nothing to do with the New York Harbor coal. That is the regular shipments of anthracite coal from the mines.

Q. So that that includes coal shipped to Canada and the West and to Buffalo for transshipment at the lakes? A. Yes.

Q. Well, does it, according to your understanding of it, represent the total shipments? A. Total shipments.

Q. Of anthracite coal over that railroad, wherever 1114
they may be consigned? A. Yes.

Q. And I assume that **Government Exhibit No. 70,** where the Lehigh Valley Railroad Company appears also, that what you have said as to Exhibit No. 69 is true as to Exhibit No. 70? A. Yes, sir.

Q. Then, these two statements have no association with the work you do for certain producing companies in Pennsylvania to enable them and their selling agents and their vendees under purchase contracts to ascertain 65% of the selling price at the Harbor point of coal 1115
utilized in settlement of their purchase contracts and so forth, leases, or whatever they may be. A. No, sir.

Q. And you are continuing the Bureau of which Mr. Ruley was the head and the proprietor for several years prior to his death? A. Yes, sir.

Q. Along the same lines practically as established by him? A. Yes.

Q. And you were associated with him for several years prior to his death? A. Yes, sir.

Q. Now, the statements which you furnished the Government, of which Mr. Boles made enquiry, were 1116
they sent annually? A. Annually, yes, because Parker's report is made up on an annual basis. He issues no monthly statement.

Q. And he asks you for this information? A. Yes, sir.

Re-Direct Examination by Mr. Machen:

Q. Mr. Armstrong, let me get a few points clear. In the first place, your report of prices is confined to

1117 prices f. o. b. New York Harbor, isn't that right? A. Yes, sir.

Q. But your report of shipments of coal is not confined to shipments at New York tide? A. No, direct from the mines.

Q. But includes all shipments from the mines to any point whatsoever? A. Yes.

Q. In making your report of sales at New York Harbor do you distinguish between Coxe Brothers & Company and the other coal produced by companies owned
1118 or which the Lehigh Valley Railroad Company may be interested in? A. No, sir.

Q. You make no distinction between the coal of Coxe Brothers & Company and the Coal of the Lehigh Valley Coal Company? A. No, sir.

Q. How do you determine what independents you shall send information to; you said you had a mailing list of seven or eight independents? A. It is not necessary to determine. The mere fact that they are interested in prices of coal at New York Harbor would lead me to believe that they had some use for them, and if
1119 they can show that they have use for them there is no objection to furnishing them.

Q. How did you come to cease sending information to the Lehigh Valley Coal Company and send it to the Lehigh Valley Coal Sales Company as such? A. I did not cease sending information to the——

Mr. Warren: He did not say any such thing as that.

Q. Didn't you say that? A. No.

1120 Q. You still continue to send information to the Lehigh Valley Coal Company? A. Yes, sir.

Q. Do you make any report to the Lehigh Valley Coal Sales Company? A. Yes, sir.

Q. You report to both of them? A. Yes, sir.

Q. You ceased to get information of sales from the Lehigh Valley Coal Company in March, 1912, did you? A. Yes, sir.

Q. Did you at that time make any enquiry as to why the Lehigh Valley Coal Company which had hitherto

been reporting to you, did cease at that time to do so? 1121
A. No, sir.

Q. Did the Lehigh Valley Coal Sales Company simply commence sending to you the reports which previously had come from the Lehigh Valley Coal Company? A. Yes, sir.

Q. And you made no enquiry as to what the cause of change was? A. No.

Q. Did you get any information from the Lehigh Coal & Navigation Company? A. No, sir.

Q. Do you make any reports to them? A. Yes, sir. 1122

Q. You treat them as you do the Susquehanna Coal Company? A. Yes.

Q. What reports do you furnish them? A. I furnish them the regular shipment reports and also the tide water averages.

Q. Is there any information furnished to you regarded as confidential, or is it all public property? A. I did not get that question.

Q. Is any of the information furnished to you confidential or is it all regarded by you as public property, which you may divulge to anyone? A. I would regard 1123
all information furnished to me as confidential as is used to arrive at the general results.

Q. I misunderstood you then; I understood you on cross examination to say that none of the information you received was confidential? A. The information that I receive—understand me—I will just take this out of the testimony and explain that to you. When I speak of information being confidential I mean that prices, for instance, the tonnage of the Lehigh Valley Coal Sales Company, that is reported to me to compile a price at 1124
New York Harbor tide. I wouldn't feel that I had any right to furnish that to any outsider without first consulting the Lehigh Valley Coal Sales Company, but as far as any information that I compile personally and send out, it is all open and public.

Q. Then you would not feel justified in furnishing information as to the tide water general average prices without first consulting the various companies? A. Oh, no. I am speaking of their individual tonnage. As far

1125 as the average price at New York Harbor is concerned that would be furnished to almost anyone, but as far as the prices of the Lehigh Valley Coal Company—I am speaking of them as to the matter in question—if any one came to me and asked in regard to their figures I would feel it was just as easy for that party to get them from the Lehigh Valley Coal as well as it was from me.

Q. Is there any great difference between the average price as reported by the different companies to you? A. No.

1126 Q. They all report about the same? A. Yes.

Re-Cross Examination by Mr. Warren:

Q. The reports that come to you from companies selling coal at the Harbor points cover the total tonnage and the prices received therefor, does it not? A. Yes.

Q. And does not undertake to cover the prices received for sample blocks, or fractions of that tonnage; to illustrate, if the Pennsylvania Coal Company through its selling agents in New York, sold 100,000 tons for the

1127 month of May, 1914, it would report to you that it sold 100,000 tons? A. Yes.

Q. And it would report to you the money it got from the one hundred thousand tons, wouldn't it? A. Yes.

Q. But, of course, it would not report to you what it got for each specific sale to John Smith, Brown and Jones? A. No.

Q. Or whether they sold to Smith at a price different than they sold to Brown or to Jones, would they? A. No.

Q. And again, the counsel for the Government asked

1128 you whether there was any separation as between the Coxe Brothers & Company and the Lehigh Valley Coal Company coal; there is no differentiation in the report to you as between any of producing companies whose coal is sold by the Lehigh Valley Coal Sales Company? A. No, sir.

Q. In other words, it is all tonnage sold at Harbor points? A. Yes.

Q. Wherever it comes from or from whomsoever it purchases that coal? A. Yes.

Q. Whether it be the Lehigh Valley Coal Company, 1129
the Lehigh Valley Coal Sales Company, the Forty-Fort Coal Company or any other person that it is able to make a bargain with and buy its coal from, isn't that right? A. No distinction.

By Mr. Machen:

Q. Do your general average prices, like Mr. Ruley's include coal sales, what I may term the normal coal, or do they include the special coal? A. They only include the free burning white ash coal.

Q. They do not include the Markle coal then? A. No, 1130
I don't suppose they do. You know that special grade of coal is not included in that. Free burning white ash is the only one.

Q. You formerly used to separate between the Coxe Brothers' coal and the coal of the Lehigh Valley Coal Company, did you not? A. We did at one time.

Q. You assisted in preparing with Mr. Ruley, didn't you, the table showing the separation between the two? A. Yes, sir.

Q. For use in the former suit of the Reading Com- 1131
pany? A. Yes.

By Mr. Warren:

Q. That was the time when Coxe Brothers & Company was selling coal through a sales agency in New York and the Lehigh Valley Coal Company were selling coal through a selling agency in New York, was it not? A. I believe it was, although I had nothing whatever to do with that at that time.

Q. It was before March 1st, 1912, wasn't it? A. Yes, 1132
sir.

Q. Now, again, if a coal purchasing company in the anthracite region is selling its coal to any concern under a contract by which it is to receive 65% of the average selling price of the coal coming to Harbor points, is that the method as between the vendor and the vendee, for the payment of the coal purchased of the vendor; it is, of course, essential that the Coal Purchasing Company should have your figure, just as essential as for the

selling company to have it, in order to verify the payments that are made month by month by the vendor to the vendee.

Mr. Machen: I offer in evidence the testimony of **William W. Ruley**, deceased, as a witness for the United States in the case of the **United States of America** against the **Reading** Company, the Lehigh Valley Coal Company, Coxe Brothers & Company, Inc., and other defendants, being the case reported in 226 U. S. 346, and I ask that the following agreement be noted:

NOTE: It is agreed that only such portions of the testimony of said William W. Ruley shall be copied into the record, or printed in this case, as counsel for the Government or any of the defendants may indicate to the stenographer; subject, however, to any objections as to competency or relevancy which would be available if the whole of such testimony was duly authenticated and offered in evidence.

Mr. Warren: Counsel for the Lehigh Valley Coal Sales Company object to the offer of this testimony in its entirety on the ground that it is incompetent and immaterial to the issues involved in the present controversy; it is testimony of a witness taken in a different cause, to which the Lehigh Valley Coal Sales Company was not a party, involving different issues, and counsel for the Lehigh Valley Coal Sales Company has had no opportunity to cross-examine the witness as to the issues involved in the present suit, and it is incompetent as having any bearing upon the present issues so far as this defendant is concerned.

Mr. Machen: But you assent to the agreement?

Mr. Warren: I assent, but I object to it.

Mr. Boles: I object to this offer of testimony on the ground that some of my present clients were not party to the old case at all, and that the issues in the old case were entirely different from the issues in this case, and my clients have no oppor-

tunity to cross-examine the then deponent as to the issues in this case and, therefore, the testimony is incompetent. 1137

(The testimony referred to is as follows:)

"**William W. Ruley**, a witness for the plaintiff, having been duly sworn, was examined as follows:

"Direct Examination by Mr. McReynolds:

"Q. Give your age, residence, and business. A. Age, 37; residence, Bala, near Philadelphia; occupation, Chief of the bureau of anthracite statistics. 1138

"Q. How long have you been connected with the bureau of anthracite coal statistics? A. My recollection is it was in the early part of 1890.

"Q. What is the bureau of anthracite coal statistics? A. I do not know, unless it might be called a general information bureau in regard to coal matters. We do not confine ourselves absolutely to anthracite. We compile bituminous statistics to a more or less extent.

"Q. Is it an incorporated concern? A. No, sir. 1139

"Q. Is it a partnership? A. No, sir.

"Q. Or is it an individual venture? A. It is really merely a name, as far as a bureau is concerned.

"Q. Whose enterprise is it? A. It was started long before I became connected with it. At that time, in 1890, it was under the direction of Mr. John H. Jones, who had had it for a number of years previous to that time. In fact, I think, if I am not mistaken, he developed it, built up the business of collecting statistics.

"Q. Under whose control is it now? A. I look after it. I do not know that it can be said to be under anybody's control. 1140

"Q. Is it your individual business? A. Yes, sir.

"Q. So the bureau of anthracite coal statistics is simply a name under which Mr. Jones originally did business, and succeeding him you took charge? A. That is the idea.

"Q. And now you are really the bureau? A. That is what you might term it.

1141 "Q. Give us in a general way what the business of your bureau is. Describe with some detail what it is? A. We collect statistics from the anthracite roads, from which we compile a monthly report showing the general tonnages of anthracite; that is, coal actually shipped from the mines. In addition to that we compile the general average f. o. b. prices of anthracite coal, New York Harbor.

"Q. What else? A. We keep a general sort of a record of the anthracite business, and in addition, as I
1142 say, in a general way the bituminous statistics of the country. I issue or publish a little book for publication showing the production of bituminous coal in the various States, and the facts in regard to its distribution. Then I get up the matter in the anthracite map. We issue that. You have some doubtless here in your records, which will be furnished you. It is rather difficult to describe in detail. We just attempt to keep a general record of the statistics of coal production and distribution and then the specific matters I have mentioned here.

1143 "Q. Including, I presume the prices? A. Yes; that is, the f. o. b. prices New York Harbor. We do not pay any attention to any other prices. I might say that the bureau in 1890 was under Mr. Jones's direction and was authorized by the United States Census Office to take the census of coal, both anthracite and bituminous, in the United States, and just about that time I became connected with it, and served as his secretary in that connection. In the United States Census of 1901, I was authorized by the Census Department to collect the
1144 figures and make report on anthracite, and for all the years I have been connected with the bureau I have made the only regular report of anthracite coal to the United States Geological Survey, under Doctor Dave and Mr. Parker's directions.

"Q. These reports which you have made have been published by the Geological Survey of the Department of the Interior under the items of the production of anthracite coal for several years? A. Yes.

"Q. The statements you have made in these reports you regard as correct and as near accurate as you could get them? A. Yes, sir. 1145

"Q. Have you any partners in this business, or is it your own individual enterprise? A. I have, in some of the publications which we issue; I have a partner, Mr. J. W. Alder, but that is simply in some special matter.

"Q. Did you come into possession of the statistics of of the bureau which had been compiled under the direction of Mr. Jones when you took possession in 1890? A. Yes.

1146

"Q. They are still preserved with you? A. Yes.

"Q. What reports do you receive monthly, or from time to time, from coal-producing companies? A. We receive monthly reports showing shipments over the several anthracite roads.

"Q. From whom do you receive those monthly reports, from the railroads or from the coal-producing companies? A. From the railroads.

"Q. Which railroads send you in these monthly reports? Name them. A. Philadelphia and Reading, Lehigh Valley, Central Railroad of New Jersey, Delaware, Lackawanna and Western, Pennsylvania, Delaware and Hudson, Erie Railroad and New York, Ontario and Western Railroad. 1147

"Q. Does the New York, Susquehanna & Western also send in reports? A. I do not know the New York, Susquehanna and Western as a separate company; that is embraced in the Erie report.

"Q. Put in the records exactly what the several railroads report to you? A. They report the coal from the several collieries on their lines—the coal actually originating on their lines and shipped to market by them. 1148

"Q. Do you mean that each of these roads reports to you in detail the number of tons of coal which are delivered to it at each colliery along its line? A. Some of them give that detailed report. All of them do not give it in quite that much detail.

"Q. Which ones of them give it in that detail? A. The Philadelphia and Reading, the Lehigh Valley, Central of New Jersey, and Lackawanna, Ontario and Western.

1149 "Q. What do the Erie, Pennsylvania, and Delaware and Hudson Company report? A. The Pennsylvania reports its shipments by what are known as the three regions—Wyoming, Lehigh, and Schuylkill regions. The Delaware and Hudson being in one region they simply report their tonnage in a lump sum. The Erie also reports their tonnage in a lump sum.

"Q. Does the Erie get into more than one region? A. No, sir; most of the other companies operate in the three regions, or at least two regions.

1150 "Q. Does the Pennsylvania Company go into all three regions? A. Yes, sir.

"Q. When are these statistics furnished you by these several railroad companies? A. They vary from the 1st of the month following the month of shipment up to the 6th. We ordinarily issue a report on the 6th of the month.

"Q. Between the 1st and the 6th of each month the statistics which you have described are put into your hands by these several railroads? A. Yes.

1151 "Q. The result of that is that you know exactly how much anthracite coal has been shipped over all the lines of railroad going into the anthracite regions for the month before? A. Yes.

"Q. What do you do with those statistics? A. I furnish them to the officers of the railroad companies and furnish them to the press. They are usually published every month.

"Q. What do you mean by furnishing the statistics? A. Copies.

"Q. Of the actual reports sent into you? A. No;

1152 just the compiled report.

"Q. You take the statistics sent in to you, and what do you do with them? A. We simply show the shipments—the gross shipments over each road—as compared with the same month the year before for each company, and then also the total of the calendar year and the other.

"Q. Having compiled those statistics in the way you have described, what do you do with them? You said awhile ago, I understood, that you furnished them to the

presidents or officers of each road? A. Of course, it 1153
varies. Some companies we furnish quite a number of copies, others merely to the president's office or to some other officer—some one directly identified with the coal end of the business.

"Q. But to some officer or officers of the company, according to your instructions, of each one of these railroads, you furnish these compiled statistics as early in the month as you can get them out? A. I do not like to answer that 'according to instructions.' We furnish them to anyone. Anyone in the road can receive them; 1154
they can get them by writing us for them. It is simply at their request, just as I would furnish the figures and prices on their request.

"Q. You say they are furnished to the press? A. Yes; they are in the trade papers each month.

"Q. How long have you been making up the character of statistics for the railroad companies which you have just described? A. I became connected with the bureau in 1890, and I have really been doing that work ever since.

"Q. And your bureau has been receiving this kind of 1155
monthly reports from these roads, and you have been sending out this character of reports since 1890? A. Yes." • • •

"By Mr. McReynolds:

"I presume your bureau has certain clients. For whom do you make up statistics and how are you compensated for making up these statistics? Are you employed by certain interests to make these statistics regularly? A. I get a commission—I suppose it would be 1156
called a commission—from the companies who report and to whom I furnish the reports as indicated on there, based on their tonnage; that is, the amount carried. • • •

"Q. Is the detailed information which is sent in to you available to any one of these railroads? A. I do not know; they never asked for it. I would consider that information was simply given me for the purpose of checking up tonnages and showing that they were cor-

1157 rect, and not to give the individual business of one company to another, the details of their individual business.

"Q. There is no report of this detail to the individual company? A. No, sir.

"Q. Only the sum of it all is sent out by you? A. That is all; that question has never arisen.

"Q. And you do not know what would be the result? A. No.

"Q. At one time did you not send out, in connection with that report to the several railroad companies of the
1158 total amount of shipments over each line, a calculation showing its relationship to what were called 'presidents' percentages?' A. Yes, sir.

"Q. When did you cease to send out that information? A. By looking at my files I can give you the exact date.

"Q. Suppose you give me the best of your recollection and then you can supply the actual date when you look at your files? A. It must have been four years ago, I should think; three or four years ago, I am not certain.

"Q. But you say it must have been three or four years ago? A. I will put in the actual dates when I consult
1159 my files. You can tell from the statements themselves.

"Q. When did you first begin to send out, in connection with these monthly reports to the railroads, the relationship of the total shipments, to what were called the 'presidents' percentages'? A. It was somewhere between 1895 and 1900.

"Q. The exact date you can supply, can you? A. Yes, sir; I will supply the exact date. * * *

(Page 59)

1160 * * * * * * * *

"Q. What did you understand was the meaning of presidents' percentages? A. I think it was in 1896 a statement was published, in the early part of 1896, which was called the 'presidents' percentages' and which I understood and I believe was generally understood, indicated, as I say, the mine capacity of the road; that is, the capacity, the combined shipping capacity, of the mines on any given road. I incorporated those percentages of my own initiative, simply to indicate what

was supposed to be the mine capacity and what was 1161
really and actually shipped over those roads.

"Q. Didn't you have information at that time that the presidents of these roads, or parties representing these various anthracite interests, had gotten together and determined among themselves what was a fair and just distribution of the amount of coal to be produced? A. No, sir; I did not.

"Q. You do not know where you got these percentages that you entered on these reports? A. No, sir; I do not. They were published very generally. They were 1162
in all the trade papers, and were being generally discussed at that time, as to the mine capacity of these companies. It was a matter of common comment at the time.

"Q. You also showed how much the production of each road exceeded or failed to come up to these percentages, did you not? A. Yes, sir.

"Q. Why did you quit that method of reporting? A. It seemed to me that those percentages as they were given there created a misapprehension—that is, that it seemed to be thought in some quarters that they indi- 1163
cated a quota which was being worked upon; that is, a quota for each company, and I felt if that was the case that they were creating a wrong impression and it would be best not to put them on the reports."

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(Page 60)

"Q. When did you cease to put on these reports the name of the New York, Susquehanna and Western Railroad? A. When it was absorbed by the Erie Company. 1164

"Q. Do you remember about when that was? A. I do not.

"Q. Please ascertain that and let us know. You formerly reported the Delaware, Susquehanna and Schuylkill Road did you not? A. Yes, sir.

"Q. When did you cease to report to that road? A. When that company was taken over by the Lehigh Valley. My recollection is that it was continued as a separ-

1165 ate company to the end of the calendar year, in order to be able to show comparison."

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"Q. Is the information which you gave in this Government Exhibit No. 6 the only information which you sent directly to the railroad companies? A. That is the only regular information. We sometimes compile a special report on something that one company or another is interested in. That is, we compile a yearly report of the general distribution of anthracite, showing the geo-
1166 graphical distribution of it, which we also furnish to the companies.

"Q. How do you get the information upon which you make that report concerning the geographical distribution of anthracite? A. We get that from the coal companies.

"Q. From the coal companies? A. Yes.

"Q. And not from the railroad companies? A. No, sir.

"Q. That information you sometimes furnish to the
1167 railroad companies? A. We furnish it to anybody. It is a matter of public record.

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"Q. Coming now to what you call the coal companies, what information do the coal companies furnish your bureau? A. You mean the producing companies?

"Q. Yes, sir. A. From some of them we get the f. o. b. prices New York Harbor, upon which we base the general average f. o. b. price as given in the statements which we furnish. Then regularly each year I
1168 get from each coal-producing company a statement of its mine operations for the year, the amount of coal produced, the amount of coal used at the mines, shipped, number of employees, the price they secured for it, the average price secured at the mine, the division of the sizes, showing the various sizes of anthracite produced by each company, data as to strikes, and on the basis of these figures I prepared the report for the United States survey.

(Page 61)

"Q. Do I understand that every company and every line operated in the anthracite region reports to you once a year its total output for that year, together with the other information? A. Yes. 1169

"Q. That comes from every company in the region? A. Yes.

"Q. Independent operators? A. Everybody.

"Q. Everybobdy? A. There may be one or two little concerns.

"Q. About how many of these people are there? A. All told we get reports from very near 400 collieries and operations. That includes washeries, of course. 1170

"Q. Each one reports this information which you have detailed concerning itself? A. Yes.

"Q. And upon that you make up a statement showing the total production in the anthracite region? A. Yes.

"Q. And compiled the other information which you publish in connection with the Geological Bureau at Washington? A. Yes; those figures are all furnished on regular government blanks—schedules. 1171

"Q. In addition to that some companies furnish you with a statement of the amount of coal shipped by them to the New York Harbor? A. Yes, sir.

"Q. And the average prices received by them for that coal?

"Q. What companies make that report to you? A. The Philadelphia and Reading Coal and Iron Company; Lehigh Valley Coal Company; Lehigh and Wilkes-Barre Coal Company; Delaware, Lackawanna and Western—the coal department. 1172

"Q. You mean the Delaware, Lackawanna and Western Railroad coal department? A. Yes; the Hillside Coal and Iron Company, embracing the New York, Susquehanna and Western coal. The coal department of the New York, Ontario and Western; the Pennsylvania Coal Company, in connection with the Hillside Coal and Iron Company; The Lehigh Coal and Navigation Company.

1173 "Q. That makes seven companies which report directly to you the amount of coal which they send to New York Harbor and the prices which they get for it f. o. b. at that point? A. Yes.

"Q. What about Coxe Brothers; do they report? A. Coxe Brothers is now reported by the Lehigh Valley. They did formerly report separately.

"Q. What is the detail which these companies report to you? A. Each of the companies shows the total tonnage of all shipments of each size and the gross amount
1174 of money received for that size, which enables us, by adding the tonnages and the money, to strike a general average.

"Q. Are those reports made to you each month? A. Yes.

"Q. For the month of September it would be made to you between the 1st and 6th of October? A. Along about that time. We usually issue our reports about the 8th.

"Q. And so on for each month of the year? A. Yes.

"Q. Are these reports made to you so as to show the
1175 sales of the coal from the several coal regions? A. Yes, sir.

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(Page 62).

"Q. So that you are able to tell the average price received by each one of these companies for each region? A. Yes, sir.

"Q. Are those reports made in reference to all coal? A. Yes.

"Q. All sizes? A. Yes.

1176 "Q. How many sizes of coal are there? A. Broken, egg, stove, chestnut, and pea.

"Q. The chestnut and above are what you call prepared sizes? A. Yes.

"Q. And below chestnut there are what sizes? A. Pea coal and three sizes of buckwheat. Some companies only sell two sizes of buckwheat. It is called by some buckwheat 1, 2, and 3, and others call it buckwheat and rice coal.

"Q. Where does barley come in? A. Buckwheat, rice, 1177
and barley would be the corresponding terms for buckwheat No. 1, No. 2, and No. 3. Some companies do not sell anything smaller than rice, which we call buckwheat No. 2.

"Q. Broken is sometimes called grate as in the literature on the subject? A. Yes; I may add to complete that, that sometimes there is a small amount of lump.

"Q. After you get in this detailed information from these companies which you have named, what do you do with it? A. I send it out.

1178

"Q. Do you send it as you receive it, or do you compile it? A. I compile it. We compile it so as to show the general average for the three regions—coal from the three regions—Wyoming, Lehigh, and Schuylkill; and then we make up a statement showing the average price for each size from each region.

"Q. What do you do with those statements? A. We send those to the coal companies.

"Q. What companies? A. Practically to any coal companies that ask for them.

"Q. You have regular clients to whom to report them? 1179
A. Yes; we have a mailing list. Generally speaking, they are The Philadelphia and Reading Coal and Iron Company; that company would inform me of any contracts which they had with individual operators on which they had to make settlements, and I would send these reports to these individual coal companies without any request on their part, so that they would have the same information as The Philadelphia and Reading Coal and Iron Company.

"Q. And the same in reference to each of these other 1180
companies that make reports to you, I presume? A. Yes."

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(Page 64).

"Q. You said a while ago that the Lehigh Coal and Navigation Company reported to you each month its sales at New York Harbor, did you not? A. Yes.

1181 "Q. I believe you said they were not put into the general average? A. No, sir.

"Q. Why? A. Because at the time I started to compile the prices they did not seem agreeable to making the reports. They subsequently did, and inasmuch as we started on one method I did not feel that it was the proper thing to change it.

"Q. Are their averages substantially the same as the averages of the other companies that reported to you? A. I do not suppose there is any very great difference in
1182 prices. I do not know why there should be, except I know there was a difference in the prices of their own coal.

"Q. Their different collieries? A. Yes; but I suppose on equal grades they got substantially the same as the other company out in the open market.

"Q. What other companies sell here at the tide water if you know except the ones whose averages you equalized in making up the average prices for each region? A. I could not tell you, not without investigation.

1183 "Q. Do you know of any? A. I know that there are a number of companies that handle their own products here.

"Q. Who do not report to you? A. No.

"Q. Please state which companies report to you from the northern or Wyoming region. A. Lehigh Valley Coal Company; Lehigh and Wilkes-Barre Coal Company; Delaware, Lackawanna and Western coal department; the Hillside Coal and Iron Company, Ontario and Western coal departments. When I
1184 speak of the Hillside Coal and Iron Company I mean to embrace the New York, Susquehanna and Western Coal business, the Pennsylvania Coal Company, also the Delaware and Hudson business.

"Q. Does the Hillside Coal Company report to you coal which it has brought from The Delaware and Hudson Company? A. Yes. It does not make any distinction in the coal. I simply know they do report that coal, that their figures are embracing the figures of the others as well as their own."

(Page 65).

1185 "By Mr. McReynolds:

"Q. What companies report to you coal sold from the Lehigh region or central region? A. The Lehigh Valley Coal Company. The Lehigh and Wilkes-Barre Coal Company; the Coal of Coxe Brothers, which is really the Lehigh Valley now.

"Q. Is that reported separately? A. No; it is only in respect to the regions.

"Q. Are those the only companies that report from that region? A. Yes; that is the smallest region we 1186 have.

"Q. What companies report from the Schuylkill region? A. The Philadelphia and Reading Coal and Iron Company and The Lehigh Valley Coal Company.

"Q. Do any of the companies affiliated or connected with the Pennsylvania Railroad Company report to you with reference to average prices? A. No, sir.

"Q. Can you make up the figures showing the total coal sold f. o. b. New York Harbor? A. We have an approximate statement of that which we get in preparing 1187 the distribution figures which I spoke of, but no accurate statement.

"Q. What proportion of the coal that is sold on New York Harbor, according to your approximate estimate, is sold by the several companies which report their averages to you? A. I could not answer that. It has been a year since I looked at the figures.

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(Page 67)

1188 "Q. You are acquainted in a general way with the extent of the anthracite deposits in Pennsylvania? A. Yes.

"Q. What is the area? A. A trifle less than 500 square miles; about 480.

"Q. What do you include in that area? Do you mean under each acre coal is supposed to lie, or is that the area of the general district in which coal occurs? A. That is what is called the area of the coal measures.

1189 "Q. Do you mean that coal is supposed to underlie each acre in that area? A. Not necessarily.

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(Page 68)

"Q. That is the general region in which coal occurs? A. Yes; that could be said to embrace the outcropping of the entire area.

"Q. Of course, some of the acres within that area would be barren? A. I suppose so.

1190 "Q. You told us awhile ago the railroad systems which reported to you the amount of coal which was shipped over their lines. Are those all the railroad systems which enter into the coal regions of Pennsylvania? A. Yes, sir; all into the anthracite regions.

"Q. Can you tell us which of these roads carry or transport over their own lines to tidewater at New York? A. Yes, sir.

"Please give them? A. The Philadelphia and Reading; the Lehigh Valley; the Central Railroad of New Jersey; the Lackawanna; the Pennsylvania; and, of

1191 course, the Ontario and Western ship their coal really to New York Harbor over the West Shore, except the coal which they send in boats.

"Q. And the New York, Susquehanna and Western? A. I embraced that in the Erie system.

"Q. To which of the coal fields does The Philadelphia and Reading Railroad reach? A. The southern field, and it has a spur up into the Lehigh field.

"Q. Which field does the Central of New Jersey reach?

1192 "By Judge Campbell:

"Q. Where is the spur into the Lehigh field? A. I cannot tell you right offhand. Am I not correct in that?

"Q. No. A. Is that simply connecting coal?

"Q. That connects with a tract belonging to the Central and the Central uses our line. A. I was thinking that a small amount of coal comes from the Lehigh field over the Reading road.

"By Mr. McReynolds:

"Q. Which field does the Central Railroad of New Jersey get into? A. They get into the northern field and middle field.

"Q. Which field does the Lehigh Valley get into? A. The Lehigh Valley gets into each of the three fields.

"Q. And the Delaware, Lackawanna and Western? A. The northern field.

"And the Erie? A. Into the northern field.

"Q. And the New York, Susquehanna and Western? A. Into the northern field.

"Q. And the Pennsylvania Railroad? A. All three.

"Q. And the New Yokr, Ontario and Western? A. The northern.

"Q. Can you tell us the terminal points at tide in New York Harbor to which each of these railroads delivers its anthracite coal? A. The Philadelphia and Reading at Port Reading, and I think they are also delivering some coal to Port Liberty, but Port Reading particularly. The Lehigh Valley at Perth Amboy, and also right up here in the harbor, called float coal. The Central Railroad at Port Johnston. The Lackawanna at Hoboken, the Erie at Weehawken, the Ontario and Western at Cornwall, and then it comes down in boats to New York Harbor or over the West Shore.

"Q. Do you know what arrangement it has with the West Shore for its coal? A. No; I do not.

"Q. Give us a general estimate of the coal produced by the various collieries in the anthracite region used by them or in that vicinity without being shipped over railroads. A. It is about 12% of the total production.

"Q. What other means of getting coal out of the anthracite regions is there except over the railroads, as a practical question? Does not substantially all of it that leaves there, except what is used in the vicinity, go out over the railroads? A. Practically all.

"Q. Since you have been acquainted with the anthracite coal business has the number of individual operators without connection with the railroads increased or decreased? A. Just what do you mean by the term 'individual?' Do you mean absolutely independent, free from any contract?

1197 "Q. Yes. A. I will say, generally speaking, they had decreased.

"Q. Do you know what is meant by price f. o. b. New York Harbor by the selling companies that report to you from time to time? A. Free on board New York Harbor.

"Q. Free on board what and where? New York Harbor is a good long place. A. At the shipping point; the ports that we have mentioned.

"Q. You mean, then, by f. o. b. New York Harbor,
1198 that the coal is delivered on barges or on shipboard or otherwise at the terminal points of these railroads which you have mentioned? A. Yes.

"Q. Do you know anything about a differential which is allowed in rates over the railroads on account of different locations of their terminals? A. I know there is a difference in the price of coal between what is known as upper and lower ports.

"Q. What do you know about it? A. I do not know anything about it except that there is a difference.

"Q. Is it a difference in the price of the coal? A. A
1199 difference in the f. o. b. price only, as far as I am concerned. That is all I know about it.

"Q. What is the difference? A. Five cents a ton.

"Q. Coal at port Reading f. o. b., we will say, is worth a certain price? A. Yes.

"Q. At Hoboken is the price the same? A. Five cents more.

"Q. Name the ponts where this 5 cents difference exists? A. The Harbor itself, Hoboken, Edgewater, and Weehawken carry the higher price. Perth Amboy,
1200 South Amboy, Port Johnston, and Port Reading have the differential of 5 cents.

"Q. Is there any other differential than 5 cents? A. Not that I know of.

"Q. Is this 5 cents on all the sizes or only some of them? A. That is on prepared sizes.

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(Page 70).

"Q. How about the smaller sizes? A. So far as I know there is not any. It is very difficult to tell that,

on account of the smaller sizes being sold under contract extending over quite a period and you can't tell. 1201

"Q. Do you know what the barge rate is from Port Reading to the docks opposite New York City? A. I do not.

"Q. You said a while ago that your bureau prepared a map of the anthracite region? A. Yes, sir.

"Q. What is the latest map of that region? A. It was issued the early part of this year.

"Q. I have one here of 1904. A. There is a later one.

"Q. The last one was issued in 1908? A. Yes. 1202

"Q. And when before that did you issue one? A. 1904.

"Q. And the one issued in 1908 presents the statistics down to what time? A. To the close of 1907.

"Q. In your examination by the Industrial Commission back in 1900 and 1901 you produced a map with certain information about coal regions. Is that map available? A. I guess that is the issue before 1904. We issued one in 1901.

"Q. It was that map you used at that time in your testimony? A. I suppose so. That is the third or fourth issue we have made of it. 1203

(Page 89).

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"Q. You were asked when you ceased to include in your report the tonnage of the New York, Susquehanna and Western Railroad. A. Yes, sir. I began to include these figures formerly reported for the New York, Susquehanna and Western road in those returned by the Erie Railroad in March, 1901.

"Q. You also stated that you at one time reported the 1204
coal of the Delaware, Susquehanna & Schuylkill road separately, and thereafter stopped reporting in that form and included these figures in the totals for the Lehigh Valley Railroad Company? A. Yes.

"Q. When did you commence to report them in such totals? A. They were reported as a separate item up to and including the month of December, 1906, and commencing with January, 1907, the tonnage was included in the Lehigh Valley's estimates. I think my testimony

1205 shows that we carried it to the close of the year to be able to make comparisons.

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"Q. * * * In order to make it perfectly clear, is the Wyoming region the same thing frequently referred to in the literature on this subject as the northern coal fields? A. Yes.

"Q. And the Lehigh region, what does that include? A. It includes the middle field, both the eastern and western end.

1206 "Q. Will you describe so that it can be understood the relationship between the trade region and the geological fields? A. For trade purposes the district is divided into three regions namely, the Wyoming, sometimes called the Lackawanna region, the Lehigh region, and the Schuylkill; and for geographical and geological purposes into four fields or basins, namely, the northern field, the eastern middle field, the western middle field, and the southern field; the Wyoming region embracing the northern field, the Lehigh region, the eastern middle

1207 field and the southern field east of Tamaqua, and the Schuylkill region the western middle field and the southern field west of Tamaqua. That is correct.

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(Page 90)

"Q. I asked you also to prepare a statement showing as accurately as practicable the amount of coal shipped to New York Harbor. A. I understood it was to be f. o. b. New York Harbor. I can only say that is an approximation, but in going over the figures I find that the tonnage

1208 included in the compilations which I make for the prices embraces about 75% of the total coal shipped f. o. b. New York Harbor. That is a round figure, but it is substantially correct.

"Q. What is the total? A. It is between 12,000,000 and 13,000,000 tons, on an average. It is about one-fifth of the total production of anthracite coal; that is, of the total shipments of anthracite coal.

"Q. The tonnage shipped f. o. b. New York Harbor by The Lehigh Coal and Navigation Company is not included in this 75%? A. No, sir.

"Q. What is the largest shipper of coal f. o. b. New 1209
York Harbor outside of the Companies which report to you and whose averages you compile? A. I would say The Lehigh Coal and Navigation Company, off-hand, but I am not certain.

"Q. Do you get the figures of the Susquehanna Coal Company's shipments to New York? A. Do you mean the Susquehanna Coal Company of the Pennsylvania Railroad?

"Q. Yes. A. No, sir. It may be that we sometimes get the average as a mere matter of information or ex- 1210
change, but there is no arrangement for them to furnish them, nor did we, as far as I know, ever ask them to furnish them.

"Q. Do you have anything to do with the settlement between that company and the companies of which it buys coal? A .I do not catch exactly what you mean by that. Do you mean do I furnish them with the reports of the f. . b. prices?

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(Page 91)

"Q. Yes? A. Yes, sir. 1211

"Q. You furnish the Susquehanna Coal Company with the reports of the f. o. b. prices? A. Yes.

"Q. But the shipments of the Susquehanna Coal Company to tide are not included in these averages? A. No, sir, they were furnished on request to the Susquehanna Coal Company.

"Q. Do you know that the Susquehanna Coal Company purchased its coal from other producers upon the 65% contract basis? A. I do not.

"Q. The Susquehanna Coal Company ships and sells 1212
coal at New York Harbor, does it not? A. Yes, sir.

"Q. Do you know the extent of its f. o. b. shipments there? A. No, I do not. They are not so very large, though.

"Q. For a number of years you have compiled a map of the anthracite coal regions, have you not? A. Yes, sir.

"Q. Have you published that map from time to time? A. Yes.

1213 "Q. How long has that been going on? A. We have made three or four editions of it at intervals of three or four years each.

"Q. The last map was compiled and published as of what date? A. As of January 1. That is, it was revised to January, 1908, the present year.

"Q. And published since that date? A. Yes.

"Q. [redacted] here a printed copy of a map purporting to have been compiled and issued by the bureau of anthracite coal statistics, revised to January, 1908. Is
1214 that one of the maps which you have spoken of and which you have compiled and published? A. Yes, sir.

* * * * * * * * * *

"Q. How did you obtain the information, and what care has been exercised in obtaining the information set down in this map?

"Mr. Schaperkotter: That is objected to.

"A. We take the sheets just as they are there and send them to every mine inspector in the State of Pennsyl-
1215 vania, in the anthracite region, and ask them to carefully look over the section with which they are familiar, and give us any corrections that they may be familiar with, or changes or alterations in the matter. We then send the same sheet in the same way to the engineering department of all the large companies, and quite a number of the small ones, and have their departments go over the map with respect not only to the location of the collieries, but with respect to any new spurs of roads or any changes in the situation in the region. Then from
1216 that and the information which we have to get from time to time ourselves about changes and corrections we verify and collate the data from the sources I have spoken about, and check one against the other. We check, for instance, the reports and changes as made by the engineering departments of the companies with the reports made by the mine inspectors, and if there is any apparent discrepancy we investigate that discrepancy and settle it before we finally issue the map.

(Page 92) 1217

"Q. Then your endeavor is, as I understand you, through the best means of information which you have, to make this an accurate description of what it purports to represent? A. Precisely.

"Q. Up to the last of the year 1907? A. Yes.

"Q. Is this map regarded or has this map come to be generally accepted as authoritative as to the anthracite regions?

"Mr. Schaperkotter: That is objected to.

1218

"A. Without any egotism, I believe I may say it has.

"Q. Is it or not constantly used by parties interested in these sections for the purpose of locating sections and ascertaining other information there set out? A. Yes.

"Q. There are certain portions of this map which are shaded with a dark yellow, generally surrounded with a lighter yellow shading. What does the darkest shading indicate? A. That is supposed, generally speaking, to indicate the ground actually underlaid with workable 1219 coal.

"Q. What is indicated by the lighter shade? A. The outcroppings; I mean the edges of the field, as it were—probably in some places unworkable seams."

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(Page 95)

"Q. The prices and the figures you have produced here to counsel in these figures I observe that the prices even of the same company differ from time to time. For instance, here is the Lehigh Valley Coal Company, which 1220 produces coal in all three of these regions. A. Yes.

"Q. But I observe that, generally speaking, their prices are not always the same, but differ considerably in these different regions? A. Yes, sir.

"Q. On the same kind of coal, as egg or chestnut, can you tell why that is? A. No; I do not know why, unless it is simply a different grade of coal or, rather, a demand for one grade in excess of the demand for another. I presume it is simply the result of trade conditions.

1221 "Do you know whether the same sales agent sells the coal for the Lehigh Valley Coal Company whether it comes from one field or the other? A. I believe it does.

"Q. And you report the sales here as they are given to you? A. Yes, sir.

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(Page 96)

"Q. Do you know whether there is any difference in the character of the coal that comes from these various fields that would account at all for these differences in
1222 the prices? A. There is a general difference in the character of anthracite coal. It runs from a soft, rather free-burning coal in the northern field into hard in certain parts of the Lehigh field, and again becoming softer in the southern field. The hardest grains of coal, generally speaking, come from the middle or Lehigh field. The free burning coal comes from the Wyoming and Schuylkill regions."

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1223 "Q. How about Coxe Brothers & Co.? A. The Coxe Brothers coal has always been well known, a well known grade of Lehigh coal. They have a great many exclusive customers, people they have sold to year in and year out, and it would not make very much difference what the price was they always had a pretty good market for their product because it was considered an exceptionally good coal.

"Q. Do you know a producer by the name of Markle? A. Yes; they operate under the name of G. B. Markle & Co.

1224 "Q. Is that producer one of the producers that you figure in among the so-called independents? A. No, sir.

"Q. But you get their reports, I suppose? A. Yes; we get their tonnage reports.

"Q. They produce about how much, according to your recollection? A. They must produce in the neighborhood of 1,000,000 tons.

"Q. Markle & Co. operate in the Lehigh field? A. Yes.

"Q. What kind of coal do they produce? A. It is a very high grade of coal.

"Q. Do you know anything about the prices they get? 1225
Do their reports show anything about the prices they get as to the prices generally, whether they are higher or lower? A. Generally speaking, the Markle's prices are higher than the average market prices.

"Q. Do you know within what range these figures run? A. I judge 25 cents a ton more, anyway."

(Page 98)

"Q. Your prices that you gave there, do they cover 1226
all the different varieties of anthracite coal produced and sold? A. Yes, sir.

"Q. What varieties do you cover? A. There is a uniform grade, in a way. That is, I simply include what is known as 'free burning white ash' in making up the prices.

"What other varieties are there that you know from information you received that you do not include? A. The hard white ash, and there is a red-ash coal. In the Schuylkill field there is the Lykens Valley and the Lor- 1227
berry and Shamokin Coal, all varying in grade and price.

"Q. Give us an idea of how the prices on these various varieties vary as compared with white ash? A. Generally speaking, they are all higher.

"Q. Generally speaking, all these varieties are higher than white ash? A. Yes.

"Q. About what is the difference? A. I should say they would range anywhere in the same market from 10 cents a ton, and some grades run pretty near as high as 50 cents. I think it would reach as high as 50. 1228

"Q. On what variety, for instance? A. I think the Lykens Valley commands at least 50 cents a ton higher than the ordinary free-burning white ash of the Schuylkill region. I simply say that from memory.

"Q. The other varieties, like the Lykens Valley, are mainly produced in which field? A. The Lykens Valley comes from the southern fields. The Lorberry comes from the Schuylkill field. There is a hard white ash coal in the middle field, and some little red ash coal, I believe, in the middle field.

1229 "Q. You gave some figures the other day on the geographical distribution. Without going into the details of those figures, where is the bulk of the anthracite coal sold? A. Along the north Atlantic seaboard.

"Q. In what states? A. The New England States, and Pennsylvania, New York, and New Jersey.

"Q. Where is the bulk of it sold? A. 80% is sold in the New England States and the three others I mentioned.

"Q. Of course, the New England States, as compared
1230 with New York, New Jersey and Pennsylvania, take a very much smaller part? A. About 15% to the New England States, I suppose, and about 65% to Pennsylvania, New York, and New Jersey. The 65% does not include sales at the mines or colliery consumption—that is coal that actually starts from the mine in the cars.

"Q. That is shipped coal? A. Yes.

"Q. Assume that the coal consumed at the mine and sold in the immediate locality was also included, that would raise the percentage somewhat more? A. Very
1231 materially.

. . . . . .

(Page 104).

"Q. Because there was a demand for it? A. Yes.

"Q. You stated a while ago that the average prices which you compiled, copies of which you have given us here, are based upon the sales of free-burning ash? A. Yes, sir.

"Q. What proportion of the whole coal that comes to New York is free-burning white ash, that comes to
1232 the tide at New York Harbor? A. Probably 75 or 80%.

"Q. And the remaining 20 or 25% consists of the different varieties, what we might call fancy varieties or special grades? A. Yes, sir.

"Q. In the totals that you make up of the coal that comes to tide, do you include these special grades or only the free-burning ash? A. Are you speaking of tonnage?

"Q. I am speaking of the figures that you make up the tonnage and average from. A. Are you speaking of the tonnage or with respect to prices?

"Q. Yes. A. We do not bother with the special grades of coal at all. The averages are made on the free-burning white ash coal. 1233

"Q. So that the totals of the special grades are not sent into you? A. No; they are not sent in with respect to prices. We get the total tonnages to be able to find out the total amount of coal coming f. o. b. New York Harbor, approximately, but not with respect to prices.

"Q. So that your average prices upon which the settlements are made on the 65% contracts are based upon sales of free-burning white ash coal alone? A. Yes. 1234

"Q. And in these averages are not included the prices of these special grades? A. No, sir.

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(Page 105).

"Q. Suppose a certain colliery produces one special grade and has a 65% contract, does he get the 65% free-burning white ash price? A. I do not know about that.

"Q. Is there a controlling and well-defined difference in price between these special grades and free-burning white ash? A. I should not say that; no, sir. There is a difference in price, but it is a varying difference. 1235

"Q. It may be 25 or 30 cents? A. Yes.

"Q. But the variation is within comparatively narrow limits? A. They vary at different times of the years.

"Q. You are the statistican who has been agreed upon under the 65% contract, are you not? A. Yes.

"Q. You take no notice, in sending out your averages for settlement under the 65% contract, whether the colliery produces free-burning white ash coal or one of the special grades? A. So far as I know all the companies to whom I send the reports produced free-burning white ash coal, and I do not know of any case other where we send them. There may be a case or so, but I do not know it as such. 1236

"Q. Most all of these special grades are produced by companies who report to you and companies which sell upon the 65% basis? A. I do not know that they are produced by companies that report to me; take the pro-

1237 ducers I mentioned, the Lykens Valley and Lorberry; they are brought by The Philadelphia Coal and Iron Company.

"Q. And the other special grades, what were they? A. The Lehigh Valley has some special grade coal. I do not recall just what it is or what colliery it is from, but I know they have some, and I think the Lehigh and Wilkes-Barre have a little. They have some red ash coal which they do not report to me.

"Q. How about the Delaware and Lackawanna Rail-
1238 road? A. The Delaware, Lackawanna and Western is all free-burning white ash coal." • • •

Mr. Machen: I now offer in evidence, marked **Government Exhibit No. 71,** a letter signed by Walter Briggs, secretary Temple Iron Company, dated June 11, 1914.

Note: It is agreed that the statements contained in this letter as to the records of the Temple Iron Company may be received in evidence with like effect as the said original record,
1239 subject to any exceptions which would have been available if the original records had been produced and proved before the Examiner.

Mr. Warren: I agree to what you say but I object to the offer upon the ground that it is incompetent and immaterial to this issue.

Mr. Boles: Note the same position for me.

Mr. Machen: I offer in evidence statement of tonnage from the collieries of the Northwest Coal Company and other companies, showing the other
1240 companies controlled by the Temple Iron Company, and showing the sales of their output respectively for the years 1911, 1912, 1913, and 1914 up to June 1st.

Received and marked **Government Exhibit No. 72.**

Mr. Warren: I object to it as incompetent and immaterial to this issue, agreeing that the paper may be offered as if duly authenticated and properly proven, and waiving all technicalities.

William T. Grier, (recalled). 1241

Direct Examination (Continued).

By Mr. Machen:

Q. At the time of the adjournment when you were on the stand before, Mr. Grier, you had given us a statement in outline of the prevailing rate on anthracite coal to tidewater at New York on the various railroads; please look at the table which I now show you, and state whether or not the rates as they are set out are correct, and in accordance with your testimony? A. I have looked it over, Mr. Machen; as far as my recollection goes, these rates are correct. I am not definitely clear about the rates on all the sizes of coal of the other railroads, but as far as the Lehigh Valley Railroad rates are concerned on all sizes, they are correct. 1242

Q. So far as you know they are correct on the other railroads? A. Yes.

Mr. Machen: I offer this table in evidence.

(Received and marked **Government's Exhibit No. 73**). 1243

Q. The rate of $1.33 on prepared sizes and $1.24 on pea, and $1.09 on buckwheat and 98 cents on smaller sizes from the collieries and washeries on the D. L. & W. Railroad located on the Bloomsburg branch, and Scranton, South Scranton, Taylor, and on the main line of said railroad to New York Lighterage station, New Jersey, are the rates established in pursuance of the provision of the Interstate Commerce Commission in the *Marion Case*, are they not? A. I presume they are. 1244

Q. And the rates of the Lehigh Valley Railroad, as shown on this sheet, Government Exhibit No. 73 from the Wyoming region to Perth Amboy is the rate which, as you testified, was established in pursuance of the provision of the Interstate Commerce Commission in the *Mecker Case*? A. Yes.

Q. Did you prepare or cause to be prepared under your supervision the answer to question No. 37-B. of the Interstate Commerce Commission in Docket No.

1245 4914, showing the rates actually charged per gross ton for transportation of anthracite coal from the Lehigh and Schuylkill region, and from Wyoming region to Perth Amboy during the years 1903 to 1912? A. My recollection is that I had such a statement prepared.

Mr. Machen: I now offer in evidence the following tables marked respectively **Government Exhibits Nos. 74 and 75**, purporting to show the rates actually charged by the Lehigh Valley Railroad Company per gross ton for the trans-
1246 portation of anthracite coal from the Lehigh & Schuylkill region and from the Wyoming region to Perth Amboy for transshipment by water during the month of November for the years 1893 to 1912, inclusive, being the answer of the Lehigh Valley Railroad Company to question No. 37-B propounded by the Interstate Commerce Commission in Docket No. 4914.

(Received in evidence and marked **Government's Exhibits 74 and 75** respectively.)

1247 Q. I take it those answers are correct of the Railroad Company's to those questions? A. Yes, I think they are correct.

Q. As being the rates actually charged in the published rates since 1900? A. 1900? My recollection is that the tariff rates were applied from 1900 to date.

Q. Prior to that time they paid a 40% rate— A. Sixty-five and sixty.

Q. Of the tide water price? A. Yes.

Q. Explain that, Mr. Grier. A. That is a pretty com-
1248 plicated situation; I don't know as I have it entirely clear myself, but my recollection is that prior to November, 1900, the rates on anthracite coal to tide water were ascertained by taking 40% of the selling price at New York harbor when the selling price was $4.00, and the percentages accruing to railroads for transportation when the price was above $4.00 varied according to the amount in excess of $4.00 that was obtained by the shippers for their coal. As to what those exact percentage figures were I don't remember.

Q. That is sufficient, I think. You remember when 1249
you were on the stand before you were asked as to the amount of tonnage of anthracite coal originating on the Lehigh Valley Railroad, and the amount received from connecting carriers, and I now show you a statement, being a certified statement from the Interstate Commerce Commission showing the total anthracite tonnage on the Lehigh Valley Railroad for the years ending June 30th, from 1904, to 1913, inclusive, and distinguishing between that originating on the road and that received from connecting roads and other carriers,— 1250

Mr. Macbeth: This paper I offer in evidence.

(Received in evidence and marked **Government's Exhibit 76.**

Q. (Continuing)—and I ask you to look at it and state if you can, what the reason is for the considerable drop in the amount of anthracite coal tonnage received from connecting carriers in the year 1910, as compared with the year 1909? A. I could not state just exactly what caused that. You observe that 1908 also shows a ton- 1251
nage very much below the figures of 1909. I will have to make some investigation of that to answer it.

Q. All right. Do you know whether the exchange coal that Mr. Morrison testified in regard to is treated as coal received from a connecting carriers in these reports from the Railroad Company to the Interstate Commerce Commission? A. No, I do not.

Q. Or whether it was so stated at the time when no charge was made for the— A. No; you will have to get that from the accounting department; they line up this 1252
annual report according to the tonnage originating and tonnage received.

Q. I ask you to look at the papers which I now hand you marked respectively "**Government's Exhibits Nos. 77 and 78**, being, one, a copy of a letter from G. M. Cumming to C. E. Henderson, dated July 9, 1901, and a letter from G. M. Cumming to W. H. Sayre and others, dated July 11, 1901, referring to the same subject matter, and state if you know, who Mr. Cumming was and

1253 who Mr. Henderson was. A. Mr. Henderson was second vice-president of the Philadelphia and Reading Railway; I don't know who Cumming was.

Q. You don't know whether he was connected with the Pennsylvania Coal Company or the Hillside Coal & Iron Company or the New York, Susquehanna & Western Coal Company? A. No, sir.

Q. Let me ask you who was Mr. W. H. Sayre, to whom the letter of July 11th, from Mr. Cumming was addressed. A. What year is that?

1254 Q. July 11th, 1901. A. I don't know what position Mr. Sayre occupied in 1901. When he died he was Vice-President of the Lehigh Valley Coal Company.

Q. He was the Mr. Sayre who is referred to in this procedure as one of the officers of the Lehigh Valley Coal Company? A. I presume he is, I don't know how they referred to him.

Q. Who was Mr. C. H. Warren, to whom also this letter, July 11th, from Cumming was addressed? A. I don't know him.

1255 Q. Who was Mr. B. B. Caldwell? A. I don't know what position he occupied in 1901; he resigned the vice-presidency of the D. L. & W. Railroad to become president, I believe, of the Wells Fargo Express Company.

Mr. Boles: I make an objection to these exhibits as incompetent so far as they concern the Lehigh Valley Railroad Company, if they are supposed to concern the Lehigh Valley Railroad at all.

1256 Q. I would like to ask you whether the rates set out in this letter of July 11th, from Mr. Cumming to Mr. Sayre and others were in substance put into effect on the Lehigh Valley Railroad Company, noting in each instance as to all the differentials and so forth as set out in the letter. A. (After examining Exhibits 77 and 78) My recollection is that those rates were made effective on the Lehigh Valley Railroad Company prior to that time.

Mr. Boles: I object to the question because it has not been shown that these letters, of which the

present exhibits appear to be photographic copies, 1257
were ever sent to or received by, or were ever shown to or ever seen before by any officer or employe of the Lehigh Valley Railroad Company.

Mr. Machen: In view of that objection, note a request to counsel for the Lehigh Valley Coal Company and Lehigh Valley Railroad Company to produce the original letter from Mr. Cumming and Mr. Sayre, dated July 11th, 1901.

Mr. Boles: As far as the railroad company is concerned I can say now I cannot produce that, 1258
as there is nothing in those copies to indicate that we ever received such a letter, or even a copy of them.

Q. But they were retained in effect after this date. A. They were continued in effect and are in effect today with the exception that the buckwheat rate my recollection is, was reduced from $1.25 to Perth Amboy to One dollar twenty.

Q. What is the rate there on buckwheat—does the 1259
rate there show one dollar and thirty?

Q. Buckwheat No. 1, shows one dollar thirty, yes. A. Well, that has further been reduced to $1.20 from the Lehigh region and $1.15 from the Wyoming region.

Q. The reductions from the Wyoming region are due to the decision in the *Meeker case?* A. No; there was a reduction prior to the Meeker case.

Q. Has any effort been made since that time to alter these rates? A. Made by whom?

Q. By any party. A. I don't know what efforts other people made; I know we made considerable effort 1260
to keep them from being reduced.

Q. You made considerable efforts to keep them being reduced by whom? A. The Lehigh Valley Railroad Company in the *Meeker case.*

Q. Yes, to keep them being reduced by the Commission, but did you make any effort to keep them from being reduced by other carriers? A. No, sir.

Q. You held your present position in October, 1906, did you not? A. I was coal freight agent for the Lehigh Valley Railroad Company in October, 1906.

1261 Q. Don't you remember an effort which took place about that time, originating with the New York, Ontario & Western Railroad, to reduce its rates from the prices set out in this letter of Mr. Cumming? A. I have no recollection of that immediate condition, but I have seen some correspondence which the Interstate Commerce Commission produced showing that the Ontario & Western Railroad did contemplate at one time making some reduction in the rate to tide water.

1262 Q. The letter which I now show you, and offered in evidence now, and marked **Government Exhibit No. 79**, being a letter from Mr. T. P. Fowler to Messrs. Baer, Thomas, Underwood and Truesdale, dated October 29, 1906, part of this correspondence? A. If I recollect, I think that is the same letter I saw on the record from the Interstate Commerce Commission. However, I never had it in my file.

Q. Do you remember the incident? A. No, sir.

1263 Mr. Boles: I make objection to the offer of that letter to Mr. Thomas, of October 29th, 1906, on the ground of its incompetency and irrelevancy, not having been shown to have ever been received by Mr. Thomas.

Mr. Machen: The counsel for the Government requests the counsel for the Lehigh Valley Railroad Company to produce the original letter, or the copy thereof, addressed to Mr. E. B. Thomas, president of the Lehigh Valley Railroad Company, dated October 29th, 1906.

1264 Mr. Boles: I can answer that request now, by saying that the Interstate Commerce Commission several years ago asked for the production of that letter and it could not be found, and has never since been located, and cannot be found now, and there is no record of its having been received.

Recess until 2.10 o'clock, P. M.

AFTER RECESS. 1265

W. T. Grier (recalled).

Direct Examination (Resumed).

By Mr. Machen:

Mr. Machen: I offer in evidence letter from T. P. Fowler to Mr. George F. Baer, dated November 1st, 1906, marked **Government's Exhibit No. 80.**

Mr. Boles: I object to this letter on the ground that it is not signed by or addressed to 1266 any officer or employe of the Lehigh Valley Railroad Company or any of the parties to this case, and that it is incompetent and irrelevant.

Mr. Machen: I also offer in evidence a letter from George F. Brownell, Vice-President and General Solicitor to Francis I. Gowen, Esq., dated November 1st, 1906, marked **Government's Exhibit No. 81.**

Mr. Boles: Is that the one of which a copy was sent to Mr. Schaperkotter? 1267

Mr. Machen: Yes.

Mr. Boles: I admit that that letter is correct, but object to it on the ground of its irrelevancy in this proceeding.

Mr. Machen: I also offer in evidence a letter from William T. Grier, coal freight agent, to T. N. Jarvis, second Vice-President, dated November 14th, 1906, marked **Government Exhibit No. 82.**

Mr. Boles: I object to the letter, but admit the correctness of the copy. 1268

Mr. Machen: I also offer in evidence a letter from J. D. Campbell, General Solicitor, to George F. Brownell, dated November 22nd, 1906, marked **Government Exhibit No. 83.**

Mr. Boles: I object to that on the ground it is incompetent and irrelevant, and is not sent by or addressed to any of the parties in this case, or any officer or employe of any of the companies in this case.

1269 By Mr. Machen:

Q. Did you write the letter which has just been offered in evidence marked **Government Exhibit No. 82,** and addressed to Mr. Jarvis, Mr. Grier? A. It looks very much like it. I suppose it is a correct copy.

Q. Who is Mr. T. N. Jarvis? A. Mr. T. N. Jarvis was Second Vice-President of the Lehigh Valley Railroad.

Q. Is he still living? A. Yes, sir.

Q. But no longer connected with the Railroad Com-
1270 pany? A. Oh, very much so.

Mr. Boles: He is still Vice-President.

Q. Who is Mr. T. B. Koons, referred to in this letter? A. Mr. T. B. Koons is now Vice-President and Traffic Manager of the Central Railroad of New Jersey.

Q. And was at this time freight traffic manager of that railroad? A. Yes, sir.

Q. This letter states that it is sent to Mr. Jarvis, with correspondence relating to the New York, Ontario &
1271 Western Railway, Commodity Tariff No. B-38, applying on anthracite coal between points on that road. What was this correspondence which was so sent? A. I do not recollect, Mr. Machen, just what it was. In fact, I had forgotten about that letter.

Q. Did it include any of these letters which have been offered in evidence marked **Government Exhibit Nos. 80, 81 and 83?** A. Which letters are they?

Q. Well, here they are; look at them. A. Those you have just read off here?

1272 Q. Yes. A. No, I don't believe it includes any of these at all, just referred to. I don't think I ever saw a letter like that at all.

Q. Have you this correspondence which was referred to? A. I don't know whether it is in my files or not.

Q. Will you look? A. Yes.

Mr. Boles: The Commission has it.

Mr. Machen: The correspondence?

Mr. Boles: All those letters which were admitted there as the correct copies of them; the commission has all of them.

Mr. Machen: This refers to correspondence re- 1273
lating to commodity tariff No. B-38. Do you know whether that is on file?

Mr. Boles: Yes, they have it all. I have got copies of it here. Those are all letters of which the commission has the originals.

Mr. Machen: May I see them, if you have no objection to that?

Mr. Boles: No, not a bit. There is the one there, and there is the one referred to. There is the letter he referred to. (Handing papers.) 1274

Mr. Machen: That is a later one.

Mr. Machen: Isn't that 1906?

Mr. Machen: That is the 1907 matter.

Mr. Boles: Then I don't know where it is.

The Witness: I will be glad to make a search for them.

Q. Yes, if you have them, you will produce them; otherwise not? A. Yes.

Mr. Boles: Here is Mr. Thomas and Mr. Jarvis, 1275
October 30th, 1906. That is the date isn't it?

Mr. Machen: That is about the time.

Mr. Boles: Now, that was requested by subpoena of the Interstate Commerce Commission. There is a copy of that. (Handing paper to Mr. Machen.)

Mr. Machen: Thank you.

Mr. Boles: That red number I have got up here, 5, is the subpoena number.

Q. Mr. Grier, please look at these letters, which are 1276
handed to me by Mr. Boles, being copies of papers on file with the Interstate Commerce Commission in Docket number 4,914, and say whether you remember having seen any of those letters? A. I am not sure that all of this correspondence was attached to that letter. I rather recollect, however, this one dated October 30th, from Mr. Thomas to Mr. Jarvis; that is about the only one I have any clear recollection about. It may be that that correspondence was with it, but I don't remember it.

1277 Q. That was the letter of October 30th? A. Yes, I rather think that was one of the letters in the correspondence.

Q. Your letter was dated November 14? A. Yes.

Q. And who is Mr. Brownell? A. I understand he is Vice-President of the Erie Railroad.

Mr. Boles: Vice-President and General Solicitor of the Erie Railroad.

Q. Who is Mr. Francis I. Gowen? A. Francis I.
1278 Gowen, I understand, is general counsel of the Pennsylvania Railroad Company.

Q. With offices at the Broad Street Station, Philadelphia? A. Yes.

Q. And Mr. John F. Schaperkotter was formerly general counsel of the Lehigh Valley Railroad Company, was he? A. I think title of general solicitor.

Q. Who was Mr. J. D. Campbell? A. Judge Compbell was general counsel of the Philadelphia & Reading Railroad.

1279 Q. And W. S. Jenney? A. I understand he is general counsel of the Lackawanna organization.

Q. The Delaware, Lackawanna & Western? A. Yes.

Q. And Mr. Lewis E. Carr? A. I don't know him.

Mr. Boles: He is counsel of the Delaware & Hudson Company at Albany.

Q. What became of this move of the New York, Ontario & Western to reduce the rates? Were they in fact reduced? Was the tariff ever filed? A. I don't believe
1280 they were reduced.

Q. Do you remember an effort of the Delaware & Hudson Railroad in the year 1907 to reduce the rate on anthracite coal to certain New England points? A. Yes, sir.

Q. Please look at the papers which I now hand you.

Mr. Boles: I will admit they are correct.

Q. Please look at the papers which I now hand you, and which Mr. Boles has kindly stated he admits to be correct copies, being as follows: Letter from William

T. Grier to T. N. Jarvis, dated January 22nd, 1907, 1281
which I offer in evidence, marked **Government Exhibit No. 84**; letter from Mr. E. B. Thomas to Mr. T. N. Jarvis, dated January 23rd, 1907, which I likewise offer in evidence marked **Government Exhibit No. 85**; letter from T. N. Jarvis, 2nd V. P., to Mr. W. T. Grier, C. F. A., dated January 24, 1907, which I likewise offer in evidence, marked **Government Exhibit 86**; letter dated January 29th, 1907, from E. B. Thomas to David Wilcox, Esq., which I likewise offer in evidence, marked **Government Exhibit No. 87**; copy of a 1282
letter dated September 9, 1907, signed by W. T. Grier, coal freight agent, addressed to G. A. Bergen and others, which I likewise offer in evidence, marked **Government Exhibit No. 88.**

Mr. Boles: As to that I have no doubt it is a correct copy, but we have never been able to find Mr. Grier's carbon copy of it. Of course, he must have had a copy in his letters, but I suppose they got that from the Erie files, didn't they? No doubt it is correct. 1283

Mr. Machen: (Continuing). Also letter from W. J. Mullen to Mr. W. T. Grier, dated September 11, 1907, which I likewise offer in evidence marked **Government Exhibit No. 89**; letter from Mr. William T. Grier, coal freight agent, to Mr. Mullen, general traffic manager, dated September 17, 1907, which I likewise offer in evidence marked **Government Exhibit No. 90**; letter also dated September 17, 1907, from Mr. T. B. Koons to Mr. W. J. Mullen and others, a copy to Mr. Grier, which I offer in evidence marked **Government Exhibit No. 91**; letter from Mr. William T. Grier, to Mr. T. N. Jarvis, dated September 24, 1907, which I likewise offer in evidence, marked **Government Exhibit No. 92**; telegram from Mr. E. B. Thomas to Mr. L. F. Loree, dated October 16, 1907, which I likewise offer in evidence marked **Government Exhibit No. 93**; letter dated January 7, 1909, from Mr. William T. Grier to Mr. W. J. Mullen, which I likewise offer in evidence marked **Government Exhibit No. 94.** 1284

1285 Mr. Boles: I admit these copies to be correct, but object to them as incompetent, irrelevant in this proceeding.

Q. Do these letters relate to the matter of the proposed change in rates by the Delaware & Hudson Railroad, which you have just referred to? A. Yes.

Q. What was the upshot of the whole matter? A. The upshot of the whole matter is, that I understand the Delaware & Hudson Company reduced the rates.

1286 Q. When? A. I don't know the exact date. There are lower rates there now than ours.

Q. When? A. I don't know the date.

Q. Not at this time, did they? A. I don't know the date.

Mr. Boles: Well, shortly afterwards.

The Witness: Well, I don't know whether shortly or longly, afterwards; but after this they reduced the rates.

1287 Q. In 1910? A. I would not say the year.

Q. How much did they reduce them? A. About as stated in those letters, 20 cents a ton.

Q. Mr. E. B. Thomas who sent out these letters, is the Mr. Thomas who is president of the Lehigh Valley Railroad Company, isn't he? A. Yes, sir.

Q. And Mr. David Wilcox is connected with what company and in what capacity, do you know? A. Why, I think he was the President of the Delaware & Hudson.

1288 Mr. Boles: He was President.

The Witness: Yes, he was President.

Q. At that time? A. Yes.

Q. Where does the Delaware & Hudson run? A. Where does it run?

Q. Yes. A. Why, generally speaking from the Wyoming coal region to Albany and Montreal.

Q. Connecting at Albany with the Boston & Albany Road? A. And at Mechanicsville with the Boston & Maine.

Q. That is one of the anthracite coal carrying roads, 1289
is it not? A. Considered an anthracite coal road.

Q. Who was Mr. W. J. Mullen, to whom one of these letters were addressed? A. The assistant to the President, I think he was at that time.

Q. Of the Delaware & Hudson Company? A. Yes.

Q. Who were Mr. E. B. Crosley, B. A. Bergen, J. G. Searles to whom you say in your letter of January 7th, 1909, that you intend to send copies of the same? A. Mr. Crosley is general coal freight agent of the Philadelphia & Reading Railroad; Mr. Bergen was assistant 1290
general freight agent of the Erie Railroad in charge of coal traffic; Mr. J. G. Searles was general coal freight agent of the Pennsylvania Railroad.

Q. And who was J. C. Anderson? A. General freight agent of the New York, Ontario & Western Railway.

Q. Who was Mr. A. B. Wallace? A. Assistant general freight agent of the Delaware, Lackawanna & Western Railroad.

Q. Who was Mr. F. E. Herriman? A. Coal traffic manager of the New York Central & Hudson River Rail- 1291
road.

Q. Your letter of September 24, 1907, marked Government Exhibit No. 92, which has been offered in evidence, states the proceedings of a meeting held that date. Can you state whether the truth was set forth of such proceedings at that time? A. That is not a secretary's minutes of the meeting. Some of the other gentlemen may have had different impressions of what took place, but that was my impression as I reported it to Mr. Jarvis.

Q. Mr. Jarvis being your superior officer? A. Yes, 1292
sir.

Q. Who was Mr. J. C. Anderson, one the gentlemen to whom the letter of September 17, signed by Mr. T. B. Koons marked Government Exhibit 91, was addressed? A. General freight agent of the New York, Ontario & Western Railroad, or was at that time.

Q. Where, in a general way, does the New York, Ontario & Western Railroad company run from? A. It runs from—

Q. (Interrupting) The Wyoming coal fields to what point? A. From the Wyoming coal fields in a northerly

1293 direction toward Oswego, and in a southerly direction towards Weehawken.

Q. Weehawken? A. Yes, Weehawken.

Q. Where its anthracite coal terminals are located? A. Tide water terminals.

Q. Mr. Grier, where anthracite coal is shipped over one railroad to be delivered at another railroad reaching the same city, the same town, but not precisely the same coal yard, or other point of delivery, what is the charge called in addition to the freight charge from the mine to
1294 the city in question for the delivery upon the foreign road? A. Well, there are as many bases—there are as many different bases as there are shipments.

Q. Well, I was asking you what it was called? A. What it was called?

Q. Yes. A. The rates from the mines?

Q. What do you commonly call the charge for a delivery upon another railroad other than the railroad which brings the coal or other freight to the city of its destination? A. That is, if the Central Railroad of New Jer-
1295 sey brought coal to Perth Amboy on their tracks, and we switched it for delivery to a consignee located on our tracks?

Q. Yes. A. That is termed a switching charge.

Q. A switching charge? A. Yes.

Q. Now, you say these switching charges vary greatly in amount? A. Well, I don't think they vary so greatly they are generally uniform at 30 cents a ton.

Q. That is to say, it is a charge in addition, to take the illustration you have just given, in addition to the charge over the Central Railroad of New Jersey, there would
1296 still be a charge for the haulage over your line at Perth Amboy? A. Not always. That is generally absorbed by the originating carriers, so that the flat rate applies for through delivery.

Q. You say that is generally so? A. Yes.

Q. What do you mean by "generally"? A. Well, we have what we call the usual interchange switching arrangements at various points up in New York State; the New York Central absorb all charges for delivery to consignees on our tracks, and we absorb their switching charge when they make an assessment of that kind on

the coal which we give them for delivery to consignees on their tracks. 1297

Q. A kind of mutual arrangement, you mean? A. Yes.

Q. What points on the Lehigh Valley Railroad does this arrangement prevail? A. Why, it is common at almost every point where we meet another railroad.

Q. It must be very different arrangements up there from those that prevail in my part of the country.

Mr. Boles: There are; there is no doubt of that.

1298

Q. I will put it in another way. At what points on the Lehigh Valley Railroad Company where you meet another railroad, are the switching charges not absorbed by the Lehigh Valley Railroad, or where there is a delivery to another railroad; or by the other railroad where there is delivery to the Lehigh Valley? A. Right off-hand I don't think there is a single case on our line where we do not absorb the connecting lines switching charge up to 30 cents a ton. There may be some isolated case, but I have none in mind. There are so many of them of the other kind that if there are any exceptions I don't remember them. 1299

Q. Does this practice prevail with respect to all classes of freight, or only with respect to anthracite coal? A. I am not qualified to answer as to all classes of freight.

Mr. Boles: Yes, to bituminous.

The Witness: Bituminous coal, it is a common practice.

Q. I want to ask you, refreshing your recollection by looking at this map, I want you to state what were the freight rates upon anthracite coal from the Wyoming, Lehigh and Schuylkill region to Chicago, the various grades of coal? A. Three dollars and a half a gross ton. 1300

Q. On all grades? A. Yes, sir.

Q. Including pea, and buckwheat? A. Yes, sir.

Q. What are the rates from these various regions to South Plainfield, New Jersey, on anthracite coal, of course I am speaking here? A. One dollar and fifty-

1301 five on prepared, one dollar and forty on pea, and one dollar and twenty on buckwheat No. 1, and one dollar and ten on rice, and barley.

Q. What were the rates to Newark? A. One dollar sixty on prepared sizes, a dollar forty on pea, a dollar twenty on buckwheat No. 1, a dollar ten on rice and barley.

Q. Do you know what the rate would be to Pawtucket Dock, Rhode Island, transportation from Perth Amboy by water, what the total rate would be? I mean
1302 from the coal mines to the Pawtucket Dock. A. Well, the Lehigh Valley, the Bee line of the Lehigh Valley Transportation Co. publishes a rate from Perth Amboy to Pawtucket. My recollection is that it is about 45 or 50 cents a gross ton.

Q. That would be added to the f. o. b. rate at Perth Amboy and the Lehigh Valley Railroad? A. Yes, if the coal was carried in the Bee Line barges.

Q. What is the rate from the anthracite coal field to Rochester, New York? A. $1.90 on prepared sizes and
1303 $1.65 on pea and smaller.

Q. Do you happen to know what the rates are by the Lehigh Valley from the anthracite coal fields to Milwaukee and Minneapolis? A. There aren't any through rates published.

Q. There are not? A. No, sir.

Q. The rates break at Buffalo? A. Niagara frontier.

Q. Do you know what the through rates are, the rate to Milwaukee? A. I do to Milwaukee. The combination on prepared sizes would be $2.00 to the frontier and $1.75 cross Lake. I don't believe there are any rates
1304 published from Buffalo to Milwaukee by way of Chicago.

Q. I was not asking that. I was asking for the rate from the coal fields to Milwaukee, as the case may be, by cheapest rate? A. That is the cheapest rate.

Q. You don't remember as to Minneapolis what the rate is? A. No.

Q. Does this rate you have mentioned to Milwaukee apply upon all grades of coal, all sizes? A. The rate to Milwaukee is not a local rate, and it is a rate made to Milwaukee for business going beyond. $1.75 per

gross ton from Niagara frontier. I understand the local 1305
rate, that is the rate from Buffalo to Milwaukee for local delivery in the City of Milwaukee is $2.00 a gross ton.

Q. In addition to the— A. (Interrupting). $2.00 to Buffalo on the prepared sizes and $1.75 to Buffalo on pea and smaller.

Q. But is the rate, or are the rates which you have mentioned from the Buffalo frontier to Milwaukee, whether for local delivery, or if carried beyond, applicable on all sizes of coal, or only on prepared sizes, or 1306
what is the case? A. The $1.75 rate and the $2.00 rate to Milwaukee apply on all sizes, as I understand it, and the $2.00 rate up to Buffalo applies only on prepared sizes, and $1.75 on pea and smaller.

Q. Will you explain to us the matter which you testified to at considerable length before the Interstate Commerce Commission, I think as to the free storage of coal furnished by the Lehigh Valley to certain shippers or any certain shipper?

Mr. Boles: By the Lehigh Valley Railroad? 1307

Q. Yes. A. The Lehigh Valley Railroad at the present time does not furnish free storage to anybody.

Q. I mean up to a year or so ago? A. Well, the only free storage the Lehigh Valley Railroad Company provided was in bins at Perth Amboy. The bins there had a capacity of something like 200,000 tons, and the allotment of the space in those bins was made based on the tonnage of each shipper for the year before.

Q. Yes, but you don't catch what I mean. 1308

Mr. Warren: When did that cease?

The Witness: That, on June 1st, 1913, I think it was.

Q. By the way, we have a good deal of reference in this proceeding to the Interstate Commerce Commission docket No. 4914. Won't you tell us briefly what that is? A. Interstate Commerce Commission docket No. 4914, as I understand it, is the case where the Interstate Commerce Commission is investigating the

1309 rates on anthracite coal, rules and regulations and practices, governing the handling of it, by common carriers.

Q. It is a general investigation by the Interstate Commerce Commission into the rates and practices of the anthracite carriers? A. Yes.

Q. Was it instituted upon the complaint of any person or persons or by the Interstate Commerce Commission on its own motion? A. I understand that it originated with the Interstate Commerce Commission.

1310 Q. What coal storage plants are there on the line of the Lehigh Valley Railroad? A. There is one at Wende, New York, there is one at Ransom, Pennsylvania, one at Hudsondale, Pennsylvania, and one at South Plainfield, New Jersey.

Q. Where is Ransom? A. Ransom is a short distance above Coxton, Pennsylvania; or probably to better locate it, not far from, approximately 15 miles or something, above Wilkes-Barre.

Q. Do you remember that the tariffs of the Lehigh Valley Railroad Company, or some of them contain or con-

1311 tained statements somewhat in the following form: "All the rates issued by the Lehigh Valley Railroad Company applying on anthracite coal in car loads from collieries and washeries in the Lehigh, Wyoming and Schuylkill region include the privilege of dumping cars, or stopping with the coal held in cars to complete consignment at storage points to shippers at points en route on the Lehigh Valley Railroad. No demurrage will be assessed at the storage plant, and no charge made for re-consignment?" A. That is obsolete.

1312 Q. But that did exist at one time? A. Yes, sir.

Q. How long ago was that discontinued? A. I think the date was June 1st, 1913.

Q. Was there any other shipper except the Lehigh Valley Coal Company, or since March 1st, 1912, the Lehigh Coal Sales Company, which takes advantage, or which did take advantage of this provision? A. No.

Q. Why not? A. I don't know.

Q. It required a very large shipper in order to pay him to take advantage? A. I don't think so. Not such a very large shipper. I know a rather small ship-

per on the Pennsylvania Railroad who has installed a 1313
storage plant.

Q. As a matter of fact, nobody but the Lehigh Valley Coal Company or, since 1912, the Lehigh Valley Coal Sales Company, had a storage plant on the line of the Lehigh Valley Railroad Company? A. No not to my mind to amount to anything, except a small local one which G. B. Markle & Company used at their breakers, but that was on their own property, and their own plant.

Q. That is before the coal started movement on the railroad? A. No, it was loaded in cars and then dumped 1314
into this storage plant.

Q. What do you mean by "dumping cars"? A. Dumping cars in the last statement I made, you mean, as to Markle?

Q. Dumping. A. Unloading the cars.

Q. I want you to explain it on the record. I know what you mean. A. That is the unloading of the coal out of the cars, dropping the hopper and letting it go down in the bin below, or in coal storage plant, they drop it in a hopper and have a belt conveying system to haul it up 1315
onto the pyramid piles.

Q. And up until 1913, you allowed unlimited demurr age on this coal storage plant? A. Yes, sir.

Q. What is the limit now? A. A five-day average.

Q. Do you still allow the free dumping at the coal storage plant and so forth? A. Free dumping?

Q. Yes. A. No, we don't do any dumping. The shipper has got to dump his own cars in the coal storage plants.

Q. Were you familiar with the matter of the exchange in coal which Mr. Morrison testified about? A. Well, 1316
now, not familiar with it. I knew there was such an exchange made.

Q. You knew it was given free movement? A. Yes, sir.

Q. Do you remember having testified to this effect? I am reading now from stenographic report of your testimony before the Interstate Commerce Commission: "Mr. Hickey: Do you consider that fair to shippers? That is to say, the exchange coal movement"? And you answered: "Under similar conditions I think I

1317 would consider it absolutely fair, if we could get from any other shippers on the Central Railroad of New Jersey, tonnage equivalent to what we were hauling free for them, I would say that our people would regard it favorably." A. Yes.

Q. Then you were asked by Mr. Hickey: "What possibility is there for any other shipper on the rails of the Lehigh Valley Railroad to be so situated?" And you replied: "It is possible. I don't think that there is that friendly feeling existing between the individual
1318 shippers on the different roads to have an arrangement of that kind." Is that testimony correct? A. Yes, sir.

Q. When was this exchange coal discontinued? A. I don't know the exact date; it has been several years.

Q. Did you testify the other day as to the transportation of the Snow Shoe coal? A. No.

Q. How is that transported? A. Bituminous coal?

Q. Yes. A. Those mines are located on the Pennsylvania Road.

Q. Yes. A. And it is brought down by that railroad
1319 to Mt. Carmel and Wilkes-Barre, and is used, the entire production, by the Lehigh Valley Railroad Company for fuel coal.

Q. Does it suffice for the Lehigh Valley purposes for the fuel coal? A. As to quality or quantity?

Q. As to quantity. A. No.

Q. Did it formerly do so? A. As long as I have been connected with the Lehigh Valley Railroad Company it has been handled in that manner.

Mr. Boles: What?

1320 The Witness: As long as I have been connected with the Lehigh Valley Railroad, Snow Shoe coal has been used by the Lehigh Valley Railroad Company for fuel purposes.

Q. And the total output has been consumed by the Lehigh Valley Railroad? A. Yes.

Q. And in fact, the Lehigh Valley Railroad has had to purchase coal from elsewhere for its own purposes? A. Yes, sir.

Q. Bituminous coal? A. Yes, sir.

Q. How does it get its other bituminous coal? A.

Well, there is considerable coal which comes from 1321
points on the Pennsylvania Railroad brought to Mt. Carmel and Wilkes-Barre, and the Buffalo & Susquehanna Railroad supply a great quantity at Sayre; The Pittsburg, Shawmut & Northern put in a large quantity to Sayre, the Buffalo, Rochester & Pittsburg Railroad put some into Manchester, and the Yonghiogheny and Ohio Coal Company ship bituminous coal to Buffalo.

Q. Is the Snow Shoe coal transferred from the mine to Mt. Carmel by the Pennsylvania Railroad? A. Yes, sir.

Q. Does the Lehigh Valley Railroad buy from the Le- 1322
high Valley Coal Company at the mines, or at Mt. Carmel? A. I don't know definitely about that. My understanding is that they buy it right on cars at the mines.

Q. You don't know who pays freight from the mines to Mt. Carmel? A. Why, I would not like to testify as to that, but can give my impression on this, and that is, the Lehigh Valley Railroad pays it.

Q. Do you know whether the freight is—or what the freight is? A. I would not like to tell that. 1323

Q. What do you mean? A. The freight rate—you mean what the freight rate the Pennsylvania gets as its division of the through rates?

Q. I am asking you what—yes, do they get a division? Do they get for transporting the coal to Mt. Carmel, and delivering it there to the Lehigh Valley Railroad, the proportion which they would get of the through rate? A. The through rate to Shenandoah, for instance where it is consigned. It is consigned to Shenandoah, and the coal that comes via Wilkes-Barre is consigned 1324
to Coxton, and the Pennsylvania Railroad get their division of a through rate to Coxton. My recollection is the through rate is $1.75 a gross ton.

Q. They don't get the local rate from Mt. Carmel? A. Oh, no.

Q. Do you interchange—do you receive, rather, from the Pennsylvania Railroad any other bituminous coal at Mt. Carmel other than the Snow Shoe coal? A. Yes, sir.

Q. Is that comprised in the bituminous coal tonnage of

1325 the Lehigh Valley Railroad as shown in its annual reports? A. The commercial coal, yes; that is all shown, no doubt in the annual reports.

Mr. Machen: I think that is all, Mr. Grier.

Cross-Examination by Mr. Boles:

Q. Will you explain the reason why for a certain number of years the Lehigh Valley Railroad Company rather opposed the policy of joint rates on anthracite coal? A. Joint rates on anthracite coal between origi-
1326 nating anthracite carriers to my mind, is an economic waste. The coal would be necessary—it would be necessary to handle the coal four times on an interchange, and only twice on a direct movement, and there is no demand to justify an expensive movement of that kind; and it is also—we also take the position that shippers on our own roads are entitled to some protection, just the same as other roads protect their industries, like preserving their markets, as far as they reasonably and fairly can to shippers on their own roads.

1327 Q. Are you conversant with the policies of the lines which originate in the bituminous coal fields? A. I am some of them.

Q. And what policy have they pursued in this respect? A. So far as bituminous coal, I know some of them pursue precisely the same course.

Q. Did you work for a number of years with the New York Central Railroad? A. Yes, sir.

Q. How long? A. Seventeen years.

Q. In what department? A. The coal department principally, and the freight department.

1328 Q. Did they pursue that policy with respect to the bituminous coal in the region of Pennsylvania? A. They did, so far as it could be done to protect their own shippers, but in New York State where their supply on their road was inadequate to the demands, they were disposed to permit other bituminous roads to put coal on their tracks at what they considered a fair proportion of the rate.

Q. Have you pursued the policy of joining in a joint rate where the shipper or consignee showed a good commercial reason for it? A. Yes, sir.

Q. Did you recently do that for the Red Ash Coal 1329
Company? A. Yes, sir, we recently put in a tariff for the Red Ash Coal Company located on the Central Railroad of New Jersey.

Q. Do those four handlings involve a large part of the expense of transportation of anthracite? A. Yes, sir. The terminal work in the transportation of anthracite coal, I believe is one of the most important elements in the cost of performing the transportation.

Q. Does the New York Central reach any particular fields of production other than the bituminous coal? A. 1330
No, sir.

Q. Are you conversant with the policy of the Pennsylvania Railroad as to its making joint rates on bituminous coal? A. To some extent; the Pennsylvania Railroad are willing to make joint rates on bituminous coal with another carrier that takes a proportion which they think is sufficiently low, but they are not disposed to join any other bituminous road in making joint rates from collieries on these roads to points on their own lines. They claim that that is—

Q. (Interrupting) In other words, they, so far as pos- 1331
sible confine the markets of their line to the bituminous shippers on their line. A. Yes, sir.

Q. Is it your confident belief that the rate from the Wyoming region to Perth Amboy f. o. b. ought to be to-day $1.55? A. Yes, it is.

Q. Why isn't it $1.55 to-day? A. Because of an order of the Interstate Commerce Commission in the so-called *Meeker case*, ordering us to put in a rate of $1.40 a gross ton.

Q. What happened after that order expired? A. We 1332
issued a tariff restoring the old basis, that is $1.55 basis, and the tariff was suspended, and still is suspended by order of the Interstate Commerce Commission.

Q. What railroads do we compete with on coal from the Wyoming region? A. Where to?

Q. All points. A. At New York harbor we have the Central Railroad of New Jersey, Delaware, Lackawanna & Western Railroad, the New York, Ontario & Western Railroad, the Erie Railroad, and the D. & H. to a certain extent.

1333 Q. And from the Lehigh region? A. To tide water we have the Pennsylvania Railroad, Philadelphia & Reading Railroad, Lehigh & New England Railroad, Central Railroad of New Jersey, and the Pennsylvania Railroad. I think I stated them first.

Q. Is that an active daily competition? A. Yes, sir; it is very keen.

Q. And what competition from the Schuylkill region? A. In our Schuylkill region, which we designate as the Schuylkill region, we only have one operation, that is,
1334 Blackwood, which comes in competition with the Philadelphia & Reading Railroad, and all the other coals that are mined in what we term the Lehigh region, although part of it is geologically known as the Schuylkill district, but for our purposes we designate that entire territory the Lehigh region.

Mr. Machen: You mean the Lehigh Coal & Navigation Company's territory down about Eastern and Tamaqua.

The Witness: No, I refer to the territory on
1335 our line west of a point we call Quakake over towards Mt. Carmel. That is geologically known as the Schuylkill district, but we throw it in with our Lehigh district which comprises all the mines which comes to our main line at Penn Haven Junction and at Hayes Creek Junction.

Q. Were you connected with the Lehigh Valley Railroad in November, 1905? A. No, sir.

Q. What is the Pennsylvania Railroad rate to South Amboy from the anthracite region? A. On prepared
1336 sizes $1.40 per ton.

Q. And what are the reasons for the existence of that rate?

Mr. Machen: What is that question?

(Question read by the stenographer.)

The Witness: My opinion is that that rate was made by the Pennsylvania Railroad shortly after the discontinuance of the practice of arriving at transportation rates on the so-called percentage basis—the selling price at the time taken in con-

nection with the percentage basis used, in making rates figured at $1.40 per gross ton, and they established that as a tariff rate. Ever since that time there has been considerable litigation regarding the rates on anthracite coal to tide water, and I got the impression from traffic officers of the Pennsylvania Railroad that they, upon the advice of their legal department, considered it unwise to make any change, although their traffic men I believe wanted to make it $1.55. 1337

Mr. Boles: This is hearsay testimony, Mr. Machen, but if you object to it on that ground I can produce Mr. Large,—Mr. Grier is present. 1338

Q. I believe you were present at the time Mr. Large testified before the Interstate Commerce Commission as to his desire ever since the rate was established, to have it raised? A. No, I was not present when he stated that before the Commission, but he has stated it to me numerous times, and it is in the record I understand of this last hearing on 4914, but I was not there.

Q. You were not there? A. No, sir. 1339

Q. What branches of traffic were handled by the New York Central when you were in the Department with which you were connected? A. They handled everything that a railroad hauls,—merchandise, freight and coal, and all kinds and classes of freight.

Q. And you were in the department seventeen years? A. Yes, sir.

Q. And what important traffic have you had jurisdiction over on the Lehigh Valley? A. Coal and coke.

Q. By coal you mean anthracite and bituminous? A. Yes, sir, and Bernice. 1340

Q. Based on your seventeen years' experience with the New York Central and your traffic experience on the Lehigh Valley, would you say that the competition in respect of the carriage of anthracite is keener than that of any other commodity?

Mr. Machen: I object to that.

A. I believe it is just as keen as any competition that exists in the transportation of any commodity on any

1341 railroad, and it has always been my belief that it was so; but I never could understand why there was so much criticism made of the rates on anthracite coal and the statements to the effect that there was a combination in restraint of trade. We are continually fighting for traffic at all points. The rates are being watched after carefully, and the competition down here in New York harbor is just as keen as it can be. The rates going up into northern New England have resolved themselves into, I believe, a keen competitive situation.

1342 Q. Well, you have in your daily experience here evidence of competition that keeps you busy in fighting other railroads, doesn't it? A. Yes, sir.

Q. Now, as coal traffic manager of the Lehigh Valley you are glad to get all the other railroads to ship anthracite coal over the Lehigh Valley as much as possible, aren't you, at connecting points? A. As passing over business?

Q. Yes. A. Why certainly, undoubtedly so.

Q. And you make efforts to get the other railroads to route as much of their anthracite traffic in order that

1343 the Lehigh Valley can get part of the haul as possible? A. Yes. Made a very good arrangement with the Lehigh & New England Railroad for movement of coal to the west through the Buffalo gateways. We look after all the traffic we can get. Our railroad has by no means reached the physical limits in the transportation of anthracite coal.

Mr. Machen: Explain on the record at this point what this arrangement with the Lehigh & New England Railroad is.

1344 The Witness: That is the road that I understand is owned by the Lehigh Coal & Navigation Company, but I know we made an arrangement with them for joint rates on anthracite coal over our lines to Buffalo and to Chicago, St. Louis, Peoria, Joliet and Kankakee and to Suspension Bridge for points in Canada, and we are getting a very nice tonnage out of it.

Q. And you pursue that policy now, and will continue to do so? A. Yes, sir.

Q. Now, is the Lehigh Valley Railroad a competitor 1345
in the transportation of anthracite coal to New England points? A. Yes, sir.

Q. By what routes? A. We have a route by Jersey City and New York, New Haven & Hartford, and also have a route via Jersey City and the West Shore Railroad up to Albany for points on the Boston & Albany Railroad; and via Jersey City and West Shore Railroad to Rotterdam Junction for points on the Boston & Maine Railroad, and then north over our own line up to a point called Sterling, then over the R. W. & O. Rail- 1346
road, via St. Albans to points in New England, Northern New England, and also via Massena Springs to Montreal and other points in Canada.

Q. Is the Delaware & Hudson Company a keen competitor of this line in respect of that traffic? A. Yes, sir, it is to all the tonnage through the central part of New England via the Albany gateways and points in New England north of that territory, and Montreal, and points between Toronto and Montreal and east of Montreal to St. Johns.

Q. Now, based on your seventeen years' experience in 1347
the New York Central, and with general merchandise traffic, and your experience here in the anthracite business and freight traffic, can you say that one railroad when it hears of a proposal on the part of another railroad with its competitive lines to reduce rates, endeavors to prevent that reduction by all reasonable, proper, business means? A. Yes, and if we didn't do it, we wouldn't be faithful to our trust.

Q. In other words, it is a matter of self protection to prevent cut-throat competition? A. Yes, sir. 1348

Q. And therefore, it was only carrying out what is done by the railroads that you have been connected with when the Lehigh Valley attempted to persuade the Delaware & Hudson not to make a reduction on its rates to New England points? A. Yes, undoubtedly that was the object we had in mind, to preserve the revenue to the Lehigh Valley Railroad Company for its stockholders, and if we did not take care of that we would not be worthy of our jobs and the railroad would not need us at all.

1349 Q. The Ontario & Western Railroad reaches the New York harbor over the West Shore Railroad from Cornwall south, does it not? A. I think they have trackage rights over the West Shore down to Weehawken.

Q. Do you know to what extent they go into the Wyoming region? A. New York, Ontario & Western Railroad really is an insignificant factor in the matter of anthracite coal. I think it will be a question of only a few years when they won't have any anthracite coal at all.

1350 Q. Why? A. The mines tributary to their lines have been worked out.

Q. They only come to a point two miles from Scranton, do they not? A. About that.

Q. And that is the extreme northern end of the Wyoming region? A. Yes.

Q. When other carriers which originated anthracite traffic that goes to cities which we also reach, which the Lehigh Valley Railroad Company also reaches, I understand at practically all those points you deliver the cars for the connecting line on a switching charge? A. Yes.

1351 Q. Can you say whether a large or a small amount of traffic is delivered on that basis between various parties named in pages 53, 54 and 55 of the petition in this case? A. Yes. To some of them there is coal of that kind delivered.

Q. Is that a considerable traffic in a year? A. No, I won't say it is considerable.

Q. This switching charge has the effect of giving the carriers that connect with us at the different points along our line, access, however, to any of those dealers, does it

352 not? A. Yes, sir.

Q. All around where there is a connecting line at the points shown? A. Yes.

Q. And it gives them access on the basis of the delivery rates on account of the aborption of the switching charge? A. As a general proposition, yes; that puts them on the same basis as if it came direct via our line and direct via the other road.

Q. In other words, by your agreeing to that switching you give other carriers which originated anthracite

traffic access to every dealer located in a city where we 1355
connect with that other line? A. That is the effect of it, yes.

Q. On the same basis as if the dealer were located on the originating line? A. Yes.

Q. He gets his coal just the same as if the originating line switched into his trestle. A. Yes.

Q. And we simply act as agents of the originating line in that transaction? A. Yes.

Q. And those privileges exist irrespective of the extent to which they may be availed of? A. No restriction. 1354
The very thing that is done in a case of that kind is where the usefulness of the traffic officer of the railroad is, if it has any at all, is I think to persuade that consignee to give him the long haul by claiming it will pay the Lehigh Valley Railroad a better revenue.

Q. Of course you much prefer to get the long haul than to get a little switching charge? A. Undoubtedly.

Q. Will you explain the reason for the $3.50 rate to Chicago, all sizes? A. As to why it applies on all sizes?

Q. Yes. A. Well, the rate—the combination of the rate to and from Buffalo makes a $3.50 on small sizes, 1353
and we simply make $3.50 on all sizes, because the through rate on prepared sizes is $3.50 and the combination on pea and smaller is $3.50, so we simply state in the tariff that the $3.50 rate applies on all sizes.

Q. Maybe I did not make myself quite clear. Why, for instance, do you carry the coal to Perth Amboy at a less rate on small sizes than you do on prepared sizes? A. That is because of the market conditions. There are no steam sizes or small sizes that go west. I do not suppose there is a car of buckwheat coal or smaller goes off 1356
the Lehigh Valley Railroad north-bound, whereas down here in New York and vicinity we have the competitive bituminous coal and coal shippers are placed in a position to meet that competition, and find a market for the steam sizes, if the rates are graded sufficiently to enable them to meet that competition.

Q. You would rather carry small sizes west, wouldn't you? A. Undoubtedly.

Q. But the reason they do not actually move is because

1357 the market demand has never existed? A. There is no consumption of steam sizes in that direction.

Q. What governs the amount of your Bee Line rates? A. What governs the amount we can make?

Q. Yes. A. That is influenced by the competitive rates made by outside boats, tramp boats; boats from port to port.

Q. From Perth Amboy to New England points? A. From Perth Amboy to New England points. If there is a great demand for water transportation, usually in-
1358 dividual lines will over night advance their transportation rates 10, 15 or 20 cents a ton; if there is no demand and boats are plentiful, they will go at almost any rate they can get, and the fact that we have got to publish a tariff and file it with the Interstate Commerce Commission, or do file it, whether we have to or not, we cannot take advantage of those conditions, because we have to give 30 days' notice to the commission before we can change our tariff.

Q. But you are advised it is necessary to file that tar-
1359 iff? A. We are advised it won't do any harm to put it in, and we put it in to avoid any controversy with the commission, might as well have it in.

Q. Therefore as to that branch of the transportation charges east of Perth Amboy by water, the rate is governed by the competition of the tramp barges? A. Yes.

Q. Which raise or lower their rates at will and on a day's notice or less? A. Yes; it is also effected by boat rates from Philadelphia.

Q. In what manner? A. Why, if the boat rates from
1360 Philadelphia run lower than the recognized boat rates, something like 30 cents a ton above New York, the shipper of coal via New York harbor cannot meet these competitive conditions unless the New England boat freight from New York is reduced correspondingly to the reduction of boat rates from Philadelphia.

Q. Or otherwise the Reading would get all the business? A. It would get a good part of it anyhow.

Q. From your knowledge of the anthracite traffic will you say what advantage it is to the Lehigh Valley Rail-

road Company to have shippers store in transit for anthracite? A. So far as the transportation is concerned it is a very desirable situation to have; it enables the railroads to transport the coal over its line at times when the weather is favorable and the general traffic conditions of the road are such it can be handled better than in the winter time when the weather conditions are heavy; it enables a regular movement over the railroad rather than concentrating the movement in a period when the consumption is greatest and the demand is greatest and the road usually more congested with all traffic. 1361 1362

Q. What relation has it to the car supply? A. It enables the railroad to turn their cars more quickly and give us a better efficiency from the coal equipment which the railroad has, because if you attempted to market all your coal in the month it was demanded it would be only a question of a month's time probably when your car supply would be cut about 30 percent, because the great volume of this coal goes off your own road in your own cars and it takes a long time for the cars to get back. 1363

Q. As the coal traffic manager would you prefer that all the larger shippers of anthracite would establish their own storage plants on our line? A. Yes.

Q. Did you offer to lease ground to the Plymouth Coal Company for certain purposes at South Plainfield? A. Yes, such an offer was made.

Q. And on a basis which was exactly equivalent to the lease to the Lehigh Valley Coal Company? A. Yes, precisely the same terms.

Q. And precisely the same terms as existed in the present lease to the Lehigh Valley Coal Sales Company? A. Yes, sir. 1364

Q. And was that offer accepted by them? A. It was not.

Q. Did they give any reasons for declining? A. Never heard anything further from it.

Q. The matter of the discontinuance of the unlimited storage privilege at Perth Amboy in cars, in other words, the matter of the establishment of demurrage

1365 there has been litigated before the Interstate Commerce Commission in several cases, has it not? A. Yes, it has.

Q. And those cases remain undecided? A. Yes.

Q. And who were the complainants in those cases? A. G. B. Markle & Company, J. S. Wentz & Company, Pardee Brothers and Weston-Dodson & Company, and in another action the Plymouth Coal Company.

Q. You referred to the movement of the exchange coal as a free movement; would you characterize that
1366 on further thought as a free movement or as a movement which was paid for in something other than money.

Mr. Machen: Objected to.

A. It is a question of reciprocal service. It was simply the Central Railroad of New Jersey performing a work equivalent to what we performed for them; just simply an exchange of service.

Q. If you get a book for a book you don't consider that you got a free book, do you? A. No.

1367 Q. Will you explain the reasons for the discontinuance of storage bins at Perth Amboy? A. The primary reason for that was the urgent demand of the transportation department for more room to increase their yard facilities at Perth Amboy. Another reason was the age of the structure—had been up there some 40 or more years—and the maintenance cost was getting so high it became quite expensive. The third reason was the possibility of conflagration, and another good reason was that no other railroad provided similar facilities.

Q. Did you take the position before the Interstate
1368 Commerce Commission in all these cases involving the anthracite demurrages and rates and practices, etc., that it was the duty of shippers to provide their own storage plants in transit? A. Yes. Invariably have taken that position. I did not believe that that was a function that the transporting carrier should perform, and had no connection whatever with the transportation service, and believed that shippers should themselves furnish the facilities and perform all the work of loading and unloading.

Q. And has that been the policy of this company? A. 1369
Yes, sir.

Q. And for some years past? A. Yes.

Q. And did you state at that time, and do you state now, that this company is willing to put all its shippers on an exact parity in that respect? A. Yes; we are perfectly willing to place all the shippers upon the same basis without any discrimination.

Q. Is it your effort to avoid as far as possible any discrimination in respect of any service or facilities of any kind between all the different shippers of anthracite 1370
on the Lehigh Valley? A. Yes; we are eternally engaged in that occupation of trying to see that everybody is treated alike and trying to see that there is no discrimination anywhere, at any place, and sometimes when we feel we are all right, to made doubly sure, we will have further investigation to feel ourselves satisfied that everbody is getting just exactly the same as everybody else gets.

Q. Do you know of a single favor that has been extended to the Lehigh Valley Coal Sales Company?

1371

Mr. Machen: Objected to.

A. No, sir. I answer that I know of none other than what would be given to any other shipper of coal over the Lehigh Valley Railroad.

Q. They transport and handle every pound of their traffic in accordance with the rules and regulations of the tariffs which we publish? A. Yes, and file with the Interstate Commerce Commission, and every other shipper's business is handled under the same tariffs and regulations. 1372

Q. Do you from time to time have calls from the examiners of the Interstate Commerce Commission? A. Yes.

Q. Have you talked to them? A. Yes, freely.

Q. Has any of them talked to you about the conditions respecting the anthracite traffic on the Lehigh Valley Railroad? A. Yes, at times.

Mr. Machen: I object to that question and answer.

1373 A. (Continuing). I had one of the Interstate Commerce Commission Inspectors in my office yesterday morning; he came and enquired regarding the Bee Line and we gave him all the information he asked for and some additional he did not ask for and he was very much pleased and satisfied and said that information I gave him would relieve him of a great deal of work.

Q. Has any of those examiners at any time ever raised any point with you or mentioned in any way any favors extended to the Lehigh Valley Coal Sales Com-

1374 pany?

Mr. Machen: I object to the question.

A. No, sir.

Q. Have those examiners from time to time called your attention to small matters, or maybe even large matters, which should be corrected by the tariff or changed by the tariff?

Mr. Machen: Objected to.

1375 A. I don't believe the Interstate Commerce Commission found any practice of the Lehigh Valley Railroad was not covered by the tariff.

Mr. Machen: I object to that answer as not only irrelevant but irresponsive.

The Witness: Well, they never expressed themselves to me.

Q. If you had your attention called to any favor or any matter which savored of discrimination in favor of

1376 the Sales Company, would you correct this to put them on a basis of other shippers?

Mr. Machen: I object to that.

A. Yes.

Cross-Examination by Mr. Warren:

Q. Mr. Grier, am I right in saying that you testified in this same celebrated 4914 investigation before I. C. C. that the railroad was prepared to lease land to any

shipper who desired to establish storage plants along its line at a fair rental? A. Yes. 1377

Q. And I understood you to say now in answer to Mr. Boles that the treatment of the Lehigh Valley Coal Sales Company by the Lehigh Valley Railroad has been identical with that of all shippers of anthracite? A. Yes, precisely.

Q. And of bituminous as well, where they ship bituminous? A. Yes.

Q. The tonnage then offered by the Coal Sales Company, deliveries are where—by the Sales Company; that is to say, the initial point is where, they being your shippers? A. The Lehigh Valley Sales Company is the shipper of the coal right from the breaker where it is loaded. 1378

Q. And you take it at the collieries and ship what coal they offer you, and ship it just as you do other anthracite tonnage or merchandise generally and carry it to the point of destination if it is on your road? A. Yes, precisely in the same manner as any freight offered to us for transportation.

Q. Has the Lehigh Valley Coal Company shipped any anthracite coal over your line since March 1st, 1912? A. No, sir. 1379

Q. Or Coxe Brothers & Company? A. No, sir.

Q. Or the Forty-Fort Coal Company? A. No, sir.

Q. Or the Mt. Lookout Coal Company? A. No, sir.

Q. Or the Raub Coal Company? A. No, sir.

Q. Or A. Pardee & Company? A. No, sir.

Q. There are numerous shippers of anthracite coal over your railroad aside from the Lehigh Valley Coal Sales Company, are there not? A. Oh, yes. 1380

Q. Take, for instance, the Connell Anthracite Coal Company at Bernice, which is in Sullivan County, northern Pennsylvania? A. Yes, sir.

Q. They are large shippers, are they not, over your line? A. Yes.

Q. They sell their own coal, or, at any rate, they ship it over your line to such points as they desire you to take it? A. Yes.

Q. As shippers and consignees? A. Yes.

1381 Q. Take the Kingston Coal Company at Kingston, Pennsylvania, they have shipped a large tonnage over your line, have they not? A. There is a large tonnage of coal from Kingston Coal Company, but I believe they sell all their coal on cars at the mine, and they ship it out account of various agents or to shippers who buy the coal from them on cars at the mine. They have track connections with the Delaware, Lackawanna & Western Railroad, and with the Lehigh Valley Railroad, and the Pennsylvania Railroad also come in there
1382 through some arrangement with the Lackawanna.

Re-direct Examination by Mr. Machen:

Q. Mr. Grier, one or two questions. How long has that practice of absorbing switching charges on anthracite coal been in effect on the Lehigh Valley? A. Well, back ever since I think I came with them—1906.

Q. Do you mean to say that the Lehigh Valley Railroad will deliver to another railroad at the same price at which it will deliver on its own line? A. Yes; we have
1383 many such instances.

Q. And that other railroads will deliver to the Lehigh Valley Company for the same price, same freight, at which they will deliver at the same point on their own line? A. Yes, sir, we have many instances.

Q. Does this freight which the Lehigh Valley receives from other roads in this way fall within the anthracite coal tonnage received from connecting carriers? A. I don't know where they put that in. I saw those figures this morning and I wondered if they had this switching tonnage in.

1384 Q. You testified I think the other day that the Bernice coal is classed as bituminous by the Lehigh Valley Railroad? A. No, sir, I don't think I testified to that effect. Its classification has been determined by the courts as anthracite coal, but we look upon it as semi-anthracite, although we have it stated in our tariff to pacify the shippers "anthracite coal, Bernice."

Q. There are no bituminous coal lands on the lines of the Lehigh Valley Railroad? A. No, sir, none at all.

Q. And about 400,000 tons I think you said a year

originates from the Bernice Coal Company? A. Yes, I think it will run higher than that now. 1385

Q. And isn't it true that that is classed as in the reports of the Lehigh Valley Railroad to the Interstate Commerce Commission as bituminous coal? A. I believe it is.

Q. There is no other bituminous coal originating on the line of the Lehigh Valley Railroad Company, is there? A. No, sir. If they show any bituminous coal originating on the Lehigh Valley Railroad they evidently must refer to this Bernice coal, simply because, no doubt, they have classified it with bituminous as a revenue item. 1386

Q. Does this practice of absorbing the switching charge exist irrespective of the amount of switching charge? A. No, we place a limit of 30 cents on it.

Q. And all in excess of that amount is borne by the shipper? A. Shipper or consignee.

Q. It is not borne by the railroad? A. No.

Q. Is the shipper charged more than 30 cents at any point on the Lehigh Valley Railroad? A. There are some places on the Lehigh Valley Railroad where we have no switching rate at all, and then it is necessary for us to apply what we call our mileage tariff, which for a switching movement would amount to I think 60 cents a ton, but that is not a switching rate really; that is a rate that is applied when there is no other tariff in effect. 1387

Mr. Boles: You did not answer the question. The switching rate is practically not over 30 cents?

The Witness: We have no switching rate over 30 cents.

Q. You do not charge any other railroad more than 30 cents? A. That is it. 1388

Mr. Boles: Your tariff does not provide for more than 30 cents?

The Witness: No; we have a switching tariff issued.

Q. Won't you explain to me a little more fully the Red Ash Coal Company case of which you spoke on cross-

1389 examination by Mr. Boles? A. The Red Ash Coal Company is an anthracite operation located on the Central Railroad of New Jersey in what we designate the Wyoming region. They made application to the Interstate Commerce Commission for certain anthracite coal rates in connection with the Lehigh Valley Railroad to Buffalo, and points west, and we agreed to give them those rates. They did not come to us direct in the first place. I don't know why; they had probably been handling the matter with the Central Railroad, but in any event, we agreed
1390 to put in rates for them from that operation on the Central Railroad of New Jersey to Buffalo and to Suspension Bridge voluntarily, and to other points in the West as I designated before.

Q. This tonnage originates on the Central Railroad of New Jersey? A. Yes.

Q. And is delivered by them to you? A. Yes.

Q. As a rule, however, your custom has been, so to speak, to encourage home industry, as you expressed it this morning, by preserving the markets on the Lehigh Valley Railroad for the use of the people who them-
1391 selves were on the Lehigh Valley Railroad? A. Yes.

Q. But notwithstanding that practice, that plan, that intention, that scheme, you adopted the practice of absorbing the switching charges? A. Yes.

Q. I did not quite understand what the arrangement with the Lehigh and New England was which you spoke of; won't you explain that a little more fully? A. The Lehigh and New England arrangement is covered by tariffs applying from all their anthracite coal operations in Panther Creek Valley, which really represents
1392 all the anthracite operations on that line, via Lizard Creek Junction and the Lehigh Valley Railroad to Buffalo and to Suspension Bridge, and to Manchester, New York for reconsignment, and to Chicago, and St. Louis, Kankakee, Joliet and Peoria.

Q. Where is the Panther Creek region? A. It is right above Tamaqua, Pennsylvania.

Q. The Panther Creek region is in the neighborhood of Tamaqua? And Coaldale and Hauto, and so forth, is it? A. Yes.

Q. Where was this coal destined to? A. It was destined to Buffalo for points in the west. It is destined to Suspension Bridge for points in Canada, and I might also add, which I did not state previously, they also have a rate to Buffalo f. o. b. vessels. 1393

Q. This is what you speak of as the passover coal? A. Yes.

Q. That is coal of which the Lehigh Valley is simply intermediate carrier? A. That is the idea.

Q. You spoke of the Delaware & Hudson as a competitor of the Lehigh Valley in the transportation of coal to New England, didn't you? A. Yes. 1394

Q. Is the Lehigh & New England also engaged in the transportation of coal to New England? A. Yes; they have recently put in tariffs I believe.

Q. How about the Lehigh & Hudson River? A. The Central Railroad of New Jersey makes rates from the collieries on their line to points in New England via the Lehigh & Hudson River Railroad.

Q. That is one of the routes then to New England? A. Yes, sir.

Q. From the anthracite coal fields? A. Yes. 1395

Q. When you speak of the Lehigh region do you mean to include the region in the vicinity of Shenandoah? A. Yes.

Mr. Boles: That is everything south of the Wilkes-Barre Mountain.

Q. The territory from which the hard white ash coal is derived is the region around Hazleton, isn't it? A. Yes.

Q. That is, the northern portion of the Lehigh region? 1396
A. It is really the eastern end of what you call the Lehigh region.

Q. It is the eastern middle coal field? A. That is the idea.

Q. That is where this hard white ash coal originates? A. Yes.

Q. The only railroad which penetrates that region is the Lehigh Valley, isn't it? A. No; the Central Railroad of New Jersey goes there.

Q. The Central Railroad of New Jersey reaches the

1397 edge, but the Lehigh Valley is the only railroad which runs through it? A. Through it entirely, yes.

Q. You said that the usual differential between the upper ports and the lower ports of New York Harbor is five cents, but that the D. L. & W. had reduced this in some cases to three cents, didn't you? A. Yes.

Q. Do you know what the reason for that reduction was? A. Mr. Learoyd told me they made that reduction to pacify some Coal Company.

Q. Was the Red Ash Coal case that I referred to also
1398 a case of passover coal? A. Yes.

Q. The Lehigh Valley being an intermediate carrier? A. Yes.

By Mr. Warren:

Q. Will you tell us what the complaint of G. B. Markle Company was against the Lehigh Valley Railroad Company of which you made mention? A. G. B. Markle Company principally complained about the rate on anthracite coal from the Lehigh Region to Perth Amboy, using as an argument the rate which was in effect from
1399 the Wyoming Region, and further attempted to fortify its argument by technical and theoretical ideas advanced by an engineer. It also attacked the demurrage regulations which we put into effect at Perth Amboy and also the abolition of the free storage at Perth Amboy.

Q. That is still pending as I understand it? A. Yes, before the Commission.

Q. You transport the Markle Company's coal very generally throughout the States, do you not? A. Yes.

1400 Q. So that while you could not undertake to deliver the proportion of it that comes to tide, it is only a relatively small proportion of the total Markle coal that you transport that comes to tide, is that right? A. I think that is quite correct.

By Mr. Boles:

Q. Mr. Grier, that so-called policy of encouraging home industry inures to the benefit of every colliery on our rail, does it not? A. Yes.

Q. Both to such shippers as the Lehigh Valley Coal 1401
Sales and the G. B. Markle Company and Elliot McClure and Whitney and Kemmerer and Weston Dodson Company? A. Yes.

Q. And Plymouth Coal Company, and Kingston Coal Company get exactly the same benefit out of it? A. Yes.

Q. You do it strictly from a transportation standpoint? A. That is my interest.

Hearing adjourned to Wednesday, July 15th, 1914, at 1402
10 o'clock, A. M.

New York, July 15, 1914.

Hearing resumed pursuant to adjournment.

APPEARANCES AS BEFORE.

George J. Gildroy called on behalf of the Petitioner, being first sworn, testified as follows: 1403

Direct Examination by Mr. Machen:

Q. Please state your residence and occupation, Mr. Gildroy? A. Superintendent of Lehigh Valley Railroad Company, Hazleton, Pennsylvania.

Q. Of what portion of the Lehigh Valley Railroad? A. Mahanoy and Hazleton division.

Q. What are the limits or extent of that division? A. The main line is from Penn Haven Junction to Mt. Carmel. It is pretty hard to give the balance, it is all interwoven into all the branches. 1404

Q. From Penn Haven Junction westerly? A. To Mt. Carmel.

Q. And including the line to Derringer? A. To Derringer, yes.

Q. How long have you held this position? A. Since 1901—February first.

Q. Were you connected with the railroad before that time? A. From May 1st, 1899.

1405 Q. Have you been familiar with the operations of the railroad in anthracite coal fields, particularly in the so-called middle field, the Lehigh field or Lehigh region? A. In what way?

Q. With the operations of the railroad? A. Yes.

Q. Can you describe to us in a general way the location of the Delaware, Susquehanna and Schuylkill Railroad? A. It did extend from Drifton to Derringer and another line extending from Roan to Sheppton.

Q. The line from Drifton to Derringer was rather a
1406 circuitous route, was it not? A. Yes.

Q. Passing through Eckley and near a place called Lumber Yard? A. Yes; right close to that, yes.

Q. And joining the line to Sheppton at what point? A. Near Roan.

Q. That is in the vicinity of Hazleton, was it? A. Yes, I think they called the station Hazleton Junction.

Q. Now, the Lehigh Valley operated at that time a line between Drifton and Derringer, did it not? A. At that time?

Q. Yes. A. At what time, Mr. Machen?

1407 Q. At the time of the purchase, or prior to the purchase by the Lehigh Valley of the Delaware, Susquehanna & Schuylkill. A. To Tomhicken.

Q. But not extending all the way to Derringer? A. No.

Q. Tomhicken is about a mile perhaps, or half a mile from Derringer? A. No, it is possibly over—a little over two miles. I won't say exactly off hand.

Q. With what railroad or railroads did the Lehigh Valley connect at Tomhicken? A. The Pennsylvania.

1408 Q. The Delaware, Susquehanna & Schuylkill also passed through or very close to Tomhicken, did it not? A. Yes.

Q. Do you know what mine or mines were reached by the Delaware Susquehanna & Schuylkill? A. On their direct line?

Q. Prior to the acquisition of the road by the Lehigh Valley? A. Yes.

Q. What were they? A. Drifton colliery, Eckley colliery, by a branch from Roan to Beaver Meadow colliery, Harwood colliery, Oneida colliery, Derringer colliery.

Q. Who operated these collieries, what company at 1409
that time? A. There was the Cross Creek Coal Company, or Coxe Brothers, Inc.; I think the latter.

Q. Coxe Brothers & Company, Inc. was the same company under a new name, wasn't it? A. I could not say. I am not familiar with that.

Q. Did the Delaware, Susquehanna & Schuylkill Railroad reach any of the collieries of Markle & Company or A. Pardee & Company? A. No.

Q. Did it run within a short distance of these collieries? A. Some of them a short distance. 1410

Q. Very short distance, were there not? A. One of the Markle collieries was a very short distance from it.

Q. Which one was that? A. Highland five.

Q. How about the Jeddo colliery? A. They were quite a distance from the Jeddo colliery.

Q. What do you mean by quite a distance? A. Well, take an air line it was possibly a mile.

Q. What railroads did the Delaware, Susquehanna & Schuylkill connect with? A. Philadelphia and Reading and Pennsylvania.

Q. And the Central Railroad of New Jersey—did it 1411
connect with the Central Railroad of New Jersey at Eckley? A. They have an abandoned line there, not in use.

Q. Not in use now? A. Not at that time. They have the rails laying there, and I think, but I won't be positive they connected with that. I think they did.

Q. At what point did the Delaware, Susquehanna & Schuylkill Railroad connect with the Pennsylvania Railroad? A. At Tomhicken; near Tomhicken and Gum Run both.

Q. Between Tomhicken and Derringer? A. Yes. 1412

Q. At what point did it connect with the Central Railroad of New Jersey—what point or points? A. I think at Eckley, and they had a line of rails—there is a line of rails into Drifton; whether they had the connection or not I am not able to say. I am under the impression they did have.

Q. The Reading? A. You said Central Railroad of New Jersey.

1413 Q. I meant to ask you at what point the Delaware, Susquehanna & Schuylkill connected with the Philadelphia & Reading Railroad? A. Near Roan. The station I think they call Hazleton Junction.

Q. And a quarter of a mile from Hazleton? A. Yes, possibly that.

Q. A very short distance? A. Yes, a very short distance. On the outskirts; now part of the city.

Q. Do you know whether at one time the Delaware, Susquehanna & Schuylkill Railroad had an arrangement
1414 for the interchange of business with the Philadelphia & Reading Railroad prior to the contract between the Delaware, Susquehanna & Schuylkill and Lehigh Valley Railroad? A. In freight you mean?

Q. Yes. A. I think they did. They interchanged some freight there.

Q. That was abandoned about the time that the Delaware, Susquehanna & Schuylkill entered into the trackage contract with the Lehigh Valley, wasn't it? A. Yes, to the best of my recollection.

Q. What kinds of coal are produced—in the regions
1415 served by the Delaware, Susquehanna & Schuylkill Railroad; that is to say, the so-called eastern middle coal field, the field lying between Tombicken on the north and Beaver Brook or Beaver Meadow on the south, and Drifton on the northeast? A. As far as my knowledge it would be all the different sizes.

Q. I did not mean that, but isn't there a hard white ash coal which is peculiar to that region? A. I could not say.

Q. You are not an expert on coal? A. No.

1416 Q. What use has been made by the Lehigh Valley Railroad of the Delaware, Susquehanna & Schuylkill since its acquisition? A. A portion of it is in use and a portion not.

Q. Which portion is not in use? A. We make but very little use of the line from Stockton Junction to Oneida Junction.

Q. Can you describe that a little better, or point it out to me on this map? A. Yes. (Witness indicates on map)

Q. You mean the portion lying between the point di-

rectly north of the Lumber Yard and the junction of the line running to the Oneida colliery immediately to the south of Hazleton? A. Yes; we use that but very little. A portion of it is not in use at all. 1417

Q. That also has a branch to the Beaver Meadow colliery, hasn't it? A. Yes, and that is scarcely used.

Q. What company operates the Beaver Meadow colliery? A. Coxe Brothers & Company, Inc.

Q. Why don't you use this line? A. It is more economical to take the coal out on a line south of that.

Q. That is the Lehigh Valley reaching the same mine? A. Yes, on account of the grade. 1418

Q. So that that track has been practically abandoned, or that portion of the Delaware, Susquehanna & Schuylkill branch? A. Yes.

Q. Now, what use do you make of the track between Tomhicken and Hazleton Junction? A. Between Tomhicken and Long Run Junction we use that in connection with the Tomhicken branch, double track.

Q. The Lehigh Valley track paralleling this line? A. Yes. There is a ravine between the two tracks; sometimes they are quite a distance apart—in some places. 1419

Q. You use one track for up bound trains and— A. A portion of that.

Q. Which portion? A. From Long Run Junction to Gum Run.

Q. Long Run Junction is about half a mile west of Hazleton? A. About a mile I would judge; possibly a little more, Mr. Machen.

Q. What was the total length of the Delaware, Susquehanna & Schuylkill Railroad, do you remember; something like seventy miles? A. With the branches and sidings? I think not. 1420

Q. About sixty? A. No. I don't think it ran that, Mr. Machen.

Q. Something in that neighborhood? A. Yes; along in there possibly. I don't think it ran that much, though.

Q. Is there any other railroad which reaches these collieries in this portion of the Lehigh Valley field in the neighborhood of Hazleton and Drifton other than

1421 the Delaware, Susquehanna & Schuylkill and the Lehigh Valley? A. Not that reaches the collieries, no, sir.

Q. The only railroad that touches that region at all is the Reading, which reaches the southern portion, isn't that so? A. Reaches the southern portion at Roan.

Q. The southern edge? A. Yes.

Q. And the Pennsylvania reaches the extreme northwestern portion at Derringer or Tomhicken? A. Yes; they come into Tomhicken; they have trackage rights.

Q. The Pennsylvania has trackage rights? A. Over
1422 the Lehigh Valley from Tomhicken to New Boston Junction, running into Hazleton.

Q. That is for passengers or— A. Passengers and freight.

Q. Through business? A. Yes.

Q. They do not do local business? A. Some freight and passenger trains; making local stops, and they have a freight house of their own in Hazleton, and deliver freight along the line—carload freight at different stations.

Q. Do they reach any collieries along that line? A.
1423 They do not reach any collieries.

Q. Was the Tomhicken colliery reached by the Delaware, Susquehanna & Schuylkill Railroad? A. Yes.

Q. That was one of the Coxe collieries, was it? A. It was what they call an opening. There was an old breaker there at one time which was abandoned, and the coal was loaded on small cars which were again loaded on other—on flat cars and moved to a Derringer breaker for preparation of the coal.

Q. Is that colliery opening at Tomhicken still in use?
1424 A. Yes.

Q. How about the Stockton colliery? A. They may take that coal to some point, possibly underground; I can't say about that.

Q. The Tomhicken colliery was reached both by the Lehigh Valley and Delaware, Susquehanna & Schuylkill? A. No. the Lehigh Valley did not go into Tomhicken colliery.

Q. It must have gone within a stone's throw of it? A. Yes, right above it, but it did not have any connec-

tion—that is, rail connection. It passed by it. It was 1425
down in a hollow partly.

Q. Were the collieries of the— A. Mr. Machen, let me make myself straight on one thing, speaking about Stockton; I think the coal or a portion of it was handled the same way, in small cars to Drifton and afterwards taken to Beaver Meadow; I believe that was the way it was handled.

Q. How far was the Hazlebrook colliery of J. S. Wentz & Company from the Delaware, Susquehanna & Schuylkill Railroad? A. Well, in an air line possibly 1426
not quite—oh, a quarter of a mile possibly.

Q. This was a colliery producing about how many tons a year, do you know? A. The Hazlebrook?

Q. Yes. A. I don't remember.

Q. When the Lehigh Valley Railroad acquired the capital stock of the Delaware, Susquehanna & Schuylkill, did the trackage agreement previously subsisting between the Lehigh Valley and the Delaware, Susquehanna & Schuylkill lapse, or is it still observed and carried out? A. I cannot say.

1427

Mr. Boles: I will admit it lapsed.

Q. In other words, the Lehigh Valley Railroad Company now runs its own engines over the Delaware, Susquehanna & Schuylkill and the Delaware, Susquehanna & Schuylkill has no separate motor power and does not run any separate trains to tide water over the Lehigh Valley?

Mr. Boles: I will admit that.

1428

Cross-Examination by Mr. Boles:

Q. Mr. Gildroy, what was the character of freight handled by the Delaware, Susquehanna & Schuylkill Railroad prior to November, 1905? A. Their coal output and supplies for the collieries.

Q. Have you told the number of collieries the Delaware, Susquehanna & Schuylkill reached; did you give their names? A. Yes.

1429 Q. And how many of those collieries were also reached by the Lehigh Valley proper at that time? A. That is, with trackage connection?

Q. In any way at all? A. Well, without trackage connection we had the Tomhicken, the Beaver Meadow, Drifton, close to Eckley.

Q. What did the Delaware, Susquehanna & Schuylkill transport in addition to coal? A. Supplies for the collieries and very little outside of that, except for two or three stores to the best of my knowledge.

1430 Q. And what kind of stores were they? A. Regular grocery or supply stores.

Q. For miners? A. For miners.

Q. Exclusively for miners? A. Well, practically so. There, of course, would possibly be others.

Q. What was the extent of the tonnage outside of anthracite and mine supplies handled by the Delaware, Susquehanna & Schuylkill in 1905? A. As near as I can tell, Mr. Boles, I don't believe from the information I have over 25 or 30 carloads of freight.

1431 Q. What kind of freight, do you remember? A. They got some ice, went into a store which amounted to about 15 or 20 carloads, along in that neighborhood; a few carloads of hay or flour which supplied the grocery supply.

Q. And altogether the whole traffic would not amount to 30 carloads a year? A. Not outside of the less than carload business; I believe not.

Q. How much would you say the less than carload business amounts to in tons? A. That would be rather hard; I don't think it would amount to a carload a day.

1432 Q. Did you ever have intimate knowledge of the character of business transacted on the Delaware, Susquehanna & Schuylkill at that time? A. Only in a casual way. I had been around there often and knew we delivered some small lots of freight and I have been down to the Reading and saw their cars coming in and saw there was very little in the cars at times. The Pennsylvania—I was told it was giving them very little—from a conductor of the Pennsylvania that ran over our line; in other words, the freight they got, they

got from three different roads; that is, the merchan- 1433
dise.

Q. What towns did they reach, the Delaware, Susquehanna & Schuylkill? A. Drifton.

Q. How large a town is that? How large was it in November, 1905? A. Possibly 1000 population; I don't think there was much over that.

Q. What other towns did they reach? A. Eckley, a little mining hamlet.

Q. What was its population in November, 1905? A. There might be five or six hundred in the town proper. 1434

Mr. Machen: You are only guessing at that.
The Witness: Yes; I can't say.

Q. You were there in that locality at that time? Visiting all of these towns? A. Yes.

Q. At that time in 1905? A. Yes.

Q. What other towns? A. Beaver Meadow; they got into the upper portion of Beaver Meadow.

Q. How large a town was Beaver Meadow at that time? A. Possibly about a thousand population, but they did not get into the town proper. 1435

Q. What other towns did they reach? A. They got into Oneida, which is a mining Hamlet similar to Eckley.

Q. How large in 1905? A. Possibly five or six hundred population. Just miners' houses. Sheppton, which was, I don't think, over seven or eight hundred population there.

Q. Any other? A. They reached Derringer, which is a few scattered houses. I would not be prepared to say, because the houses are so scattered it is a very 1436
small mining hamlet. I don't think there would be over two or three hundred.

Q. In 1905? A. Yes, but some of the houses are back over the hills and I don't know. And the Pennsylvania Railroad ran through it also.

Q. Any other towns? A. They were close to Tomhicken. That I don't think has over 25 or 30 miners' houses in it.

1437 Q. Any others? A. At Harwood colliery, the town of Harwood laid over some distance from the colliery they served; that is a town also of possibly three or four hundred.

Q. Any other towns that they reached?

Mr. Machen: How about Hazleton?

The Witness: They did not get into Hazleton.

Mr. Machen: They got within——

The Witness: They were close to it.

Mr. Machen: Practically on the outskirts?

1438 The Witness: Yes, sir.

Mr. Machen: How large a place is Hazleton?

The Witness: Close on to 30,000; I think the last census gave them 26,000 or 27,000.

Q. Did they transport any freight out of Hazleton? A. Some little, especially to Sheppton and Oneida, and they did, so the agent told me at the time and I verified it since, they moved, and he said a couple of times, two or three times a year, some oil that went to a town on the railroad.

1439 Q. In other words, the freight which they transported outside of anthracite and the mine supplies was in small L. C. L. consignments? A. Principally.

Q. Moving between towns on their own line? A. Yes, which they received from the other line.

Q. How many towns which you have mentioned were reached by the Lehigh Valley in 1905? A. Drifton, Beaver Meadow; I might say Eckley, as we left a great deal less than carload there at a station called Foundryville, as we could deliver direct there, and they would

1440 haul it so as to save the time in transporting in getting to them—Tomhicken.

Mr. Machen: How large a place did you say Tomhicken was?

The Witness: Just a few houses; I sould say 20 or 30 miners' houses; they are scattered over quite a territory. I don't think there is over that. I wouldn't like to say there is that many; they are scattered about on the hillside; you can't see them from the railroad—all of them.

Q. What proportion of the inhabitants of these different towns that you have mentioned are made up of miners and their families? A. Principally miners. Of course, the Coxe families live there, the different homes—they have their homes there and outside of those they were practically all miners and some few railroad men. Beaver Meadow, they don't get down to the town proper. There are some families that live there, two or three saloons and stores, some few stores. 1441

Q. All of those towns are really— A. But the portions they reach are all miners' houses.

Q. All of those towns are made up of miners and their families and those who have to be in business to supply the living necessities of the miners and their families? A. Yes. 1442

Q. And that is the great bulk of the town, isn't it? A. Yes.

Q. How far was it from the centre of the town to the points reached by the Delaware, Susquehanna & Schuylkill Railroad in Hazleton? A. From near Hazleton?

Q. Yes. A. Possibly a mile, or a little over.

Q. And how far from the Lehigh Valley Station—freight station? A. Our freight station is about in the centre of the town; a little over a mile away, I would say, off hand. 1443

Q. What were your operating relations with the Delaware, Susquehanna & Schuylkill Railroad in 1905? A. They moved their trains to tide water—Perth Amboy—over the Lehigh Valley tracks. We got some coal from them for other concerns; they delivered to us at what is called Lumber Yard or Stockton Junction, close to the lumber yard, and we delivered them there for some of the different concerns that I have mentioned. Ice, hay, mine supplies for Coxe Brothers' Collieries and some small carload merchandise. 1444

Q. On this local business of which you speak did you consider the Delaware, Susquehanna & Schuylkill Railroad a competitior of the Lehigh Valley?

Mr. Machen: I object to that as calling for an opinion and as propounding a question of law.

1445 Q. What is your answer? A. I did not.

Q. How long have you been in the railroad business? A. Since 1873.

Q. Since 1873? A. When I was a boy.

Q. Are you familiar with those elements in railroading work which are known as the competitive features between railroads? A. In a measure, yes.

Q. What were the relations in a personal way between you and the officers of the Delaware, Susquehanna & Schuylkill Railroad in 1905? A. All right; very pleasant.

1446 Q. Were they strictly friendly and pleasant? A. Yes, sir.

Q. What officers did that railroad have? A. They had a superintendent—I believe he was called the general manager; they had a superintendent of motive power, a master of mechanics, train master; they were stationed there at Drifton. Now their general offices I think are in Philadelphia. They also had a party that handled freight, I don't remember what his title was.

Q. Did you ever loan them engines and cars in emergencies? A. I have loaned them engines.

1447 Q. Did they at times loan you engines in emergencies? A. I don't recollect that we ever had to call on them—off hand—although our relations were so pleasant they would, of course—

Q. Did you essentially consider that railroad as part of the Lehigh Valley system?

Mr. Machen: That is objected to for the same reasons as stated above, and also as too general.

1448 Q. (Question read) A. Well, they were so close to us, running over our tracks, that we felt very closely allied with them.

Q. Did they deliver us coal for westbound movements? A. Yes, they did, some.

Q. And where did you take that coal, at what junction? A. At Stockton Junction.

Q. Was there any clear distinction drawn of these different junction points or any outward signs of any kind between the tracks of the Delaware, Susquehanna & Schuylkill and the tracks of the Lehigh Valley Railroad?

A. You mean by anything to show that they were different? Nothing to show that they were different, no, sir. 1449

Q. Will the Delaware, Susquehanna & Schuylkill Rails be used for any other purpose when the collieries that they reach are exhausted? A. I cannot see that they will be.

Q. Have we a large amount of rails lying in that immediate vicinity which will also be useless when the collieries are exhausted? A. We have.

Q. As to that part of the Delaware, Susquehanna & Schuylkill which you say is no longer in use, that is, Stockton Junction and Oneida Junction, does the Lehigh Valley Railroad Company have a line which is available for the same service between those points? A. Yes, there is nothing on that line that makes it of any value except a short distance from Oneida Junction east where we deliver occasionally a carload of freight. 1450

Q. That is, to Roan Junction? A. That is toward Roan Junction, yes—Oneida Junction and from the——

Q. But the Lehigh Valley and the Delaware, Susquehanna & Schuylkill being at any rate between Stockton Junction and Oneida Junction there is no necessity for maintaining two railroads for that short distance of say about—what is it? A. About six, seven or eight miles there. 1451

Q. Six or seven miles? A. Yes. No, sir.

Q. How long has the Pennsylvania Railroad had trackage right over the Lehigh Valley? A. Since 1886 I think the agreement calls for—sometime in 1886 is my recollection of it.

Q. And that permits them to run their trains all the way to Hazleton? A. Yes. 1452

Q. Both freight and passenger? A. Freight and passenger.

Mr. Machen: All the way to New Boston, isn't it?

The Witness: They have to get into Hazleton; they don't reach direct into Hazleton.

Q. Did the Delaware, Susquehanna & Schuylkill carry any freight from any of these points which you mention

1453 for east bound movement or westbound movement to points reached by the Lehigh Valley Railroad—that is, this merchandise? A. That I could not answer.

Q. By that I mean freight which they could deliver or did deliver to any other railroad? A. Yes, some small stuff.

Q. What did it amount to? A. Well, occasionally we got a shipment at Stockton Junction.

Q. Would it amount to ten cars in a year? A. I don't think so.

1454 Q. You did not consider that competition as a railroad man in the railroad business since 1873, did you?

Mr. Machen: Objected to for the same reasons.

A. No, sir.

Q. How many engines did the Delaware, Susquehanna & Schuylkill Railroad have engaged in the local mine service; in other words, which did not run to Perth Amboy in 1905? A. I will have to count those up. To the best of my recollection they had seven engines engaged

1455 in that service.

Q. How many engines did they have engaged in the Perth Amboy service? A. I could not answer that.

Q. You have no idea? A. I think some six or seven.

Q. Well, it would not be over ten, would it? A. Oh, no; no, I don't think so.

Q. So putting the matter at the most they had seventeen engines? A. Yes, about that; possibly a couple in weighing. I would say at the outside possibly twenty.

Q. Would they have needed a superintendent of motor

1456 power if they had not run their trains to Perth Amboy? A. No, sir.

Q. Would they have needed a train master? A. Well, they would require some person to oversee the men.

Q. To oversee the men? A. Yes.

Q. To what extent were these different engines you have mentioned engaged in service at the different collieries which could have been done more economically by the Lehigh Valley Railroad with their equipment? A. Very much more economically.

Q. As to their operation? A. Not all of them. At 1457
Drifton it was a great deal more economical; it has a descending grade; at Eckley a small branch line was built which took off a very heavy grade.

Q. Which took off a heavy grade of the Delaware, Susquehanna & Schuylkill? A. Yes. At Beaver Meadow a connection with a branch company for a short distance which also took off a heavy grade. Those were the three that were made more economical.

Q. Do I understand that there were any of these collieries that they reached which we could not reach more 1458
economically? A. The others?

Q. Yes. A. No, I don't think we could. The same connections are in as was.

Q. Well, from a railroad standpoint, was there any necessity of having these two gathering groups of tracks to serve those different collieries?

Mr. Machen: Objected to as not cross-examination.

A. I can't see that there was, as the track was very 1459
close to a majority of the properties.

Q. Have the connections with the different railroads which existed between the Delaware, Susquehanna & Schuylkill and those roads in 1905, all been preserved? A. The connection with the Reading is lying there yet; merely a frog and switch taken out. But that portion of the road to this point cannot be operated by reason of some mining which has done away with the portion of their track for the present.

Q. That is, cannot be operated by the Reading Rail- 1460
road? A. No.

Q. So that is no fault of the Lehigh Valley? A. No, sir.

Q. And what about the connections with the Pennsylvania Railroad? A. They are still intact.

Q. The Delaware, Susquehanna & Schuylkill never had more than one connection with the Reading? A. Just the one connection.

Q. And that is the one you say now could not be operated anyway? A. No.

1461 Q. The two connections with the Pennsylvania are still intact? A. Yes.

Mr. Machen: There is only one, isn't there?

The Witness: Two; one near Tomhicken.

Mr. Machen: And the other at Derringer?

The Witness: The other at Gun Run. I might add the connection at Tomhicken was not kept in very good condition, so that it could not be operated, although the rails were there. Since that it is better.

1462 Q. To what extent did any of the employes of the Delaware, Susquehanna & Schuylkill Railroad also work in connection with mining operations of Coxe Brothers?

Mr. Machen: I object to that as improper cross-examination.

A. I cannot answer that, Mr. Boles, as to what work they did with Coxe Brothers & Company. From common hearsay there was some connection, but I could not

1463 say.

Q. Were the operations of the Delaware, Susquehanna & Schuylkill Railroad anything more than the gathering and assembling of the Coxe Brothers' coal? A. Practically all.

Q. In other words, that was a group of tracks for collecting the coal from the different collieries and for delivering the mine supplies to the different Coxe collieries? A. That is practically all it was, except some few odd cars.

1464 Q. And beyond that they did nothing more in the transportation service than the few cars of miscellaneous freight you have mentioned and the transportation of their coal to Perth Amboy under the trackage contract which has been referred to, is that correct? A. And a couple of mixed trains. That is, they haul a caboose, and that was principally their own employes. They run a mixed train to Sheppton, which we do now.

Q. From Sheppton to Roan? A. Well, Sheppton to Roan and connected with another fixed train that ran from Derringer to Drifton.

Q. That train carried the freight that you have men- 1465
tioned already? A. Yes, and coal.

Q. Did the Delaware, Susquehanna & Schuylkill Railroad receive lateral cargos for their deliveries to connecting lines on anthracite? A. I am not familiar with that.

Q. You don't know anything about that? A. No.

Cross-Examination by Mr. Warren:

Q. Mr. Gildroy, will you be kind enough to tell me— 1466
you may have answered it, but I was not in the room,— where the division points which you were superintending were connected with the main line of the Lehigh Valley Railroad? A. At Penn Haven Junction.

Q. The Lehigh Valley Coal Sales Company has been a shipper of anthracite coal over your division since March 1st, 1912, has it not? A. I cannot give the date.

Q. Well, for the last year at any rate, has it not? A. Yes, I think so.

Q. There have been other shippers of anthracite coal on your division, have there not, aside from the Lehigh 1467
Valley Coal Sales Company? A. Yes.

Q. Do you know a concern in that Lehigh region known as J. S. Wentz & Company? A. Yes.

Q. Are they shippers over your division? A. I presume they operate some of the collieries known as the Hazlebrook.

Q. Are they on your line so to speak? A. Yes.

Q. That is to say, you have built a spur into that colliery to accommodate them as shippers? A. Yes.

Q. And you handle all of their coal as an initial carrier 1468
at any rate out of the collieries? A. Yes, at the Hazlebrook as an initial carrier.

Q. Looking at the report of the Department of Mines of Pennsylvania for the year 1912, part one, page 393, being the report of the eleventh anthracite district, I notice that in able A there is a list of the operators, and among them J. S. Wentz & Company, with a production for that year of 113,360 tons. Have you any way of telling us whether that practically represents the production

1469 which they send over your road? A. Not off hand I cannot.

Q. Can you tell whether it is a substantial tonnage that moves over your line—several thousands of tons at any rate in a year, is it not? A. Oh, yes.

Q. Do you know the firm of M. S. Kemmerer & Company? A. Only from hearsay.

Q. Never mind whether you know it from hearsay or not; do you know the name of the colliery they are producers of coal at? A. No.

1470 Q. Do you know the colliery of Pardee Brothers & Company up in that country? A. Yes.

Q. You handle their coal as a transporting company? A. Yes.

Q. And are you the only railroad that serves that colliery? A. Yes.

Q. I notice upon the same page the production of their colliery for that year is 565,466 tons; can you tell us whether they have more than one colliery in operation? A. They have one colliery in operation and I think one washery.

1471 Q. And you carry their entire production? A. Yes.

Q. Such as they ship I mean? A. Yes; I think they operate to the washery; they may put some prepared coal there, but that I cannot say.

Q. Do you know a concern known as A. Pardee & Company? A. Yes.

Q. They have one or more collieries up in your region there? A. One.

Q. Do you transport their coal as a carrier? A. Yes.

Q. And are you the only road that has built spur lines

1472 and branch lines into their operations? A. Yes.

Q. And this same report upon the same page credits them with a production of coal for that year of 521,503 tons. Do you know a concern C. M. Dodson & Company? A. Yes.

Q. Do you transport their coal? A. Yes, a portion of it.

Q. And is there another railroad that has built into or chutes into the colliery there? A. C. M. Dodson I think is Beaver Meadow; the Central Railroad now takes a portion of their coal.

1473

Q. You take a portion? A. Yes.

Q. Can you tell what proportion you take and what proportion they take? A. No.

Q. Can you say whether you carry a substantial tonnage from that operation? A. We get a fair tonnage, yes; it varies.

Q. Take the Harwood Coal Company; do you transport the tonnage of that operation? A. Yes.

Q. Is that on the line of the Lehigh Valley Railroad? A. Formerly the Delaware, Susquehanna & Schuylkill Railroad.

1474

Q. It is now operated by your company? A. Yes.

Q. And you transpor. 'l of their tonnage? A. Yes.

Q. I notice their tonnage for the same year appearing upon the same page of the same record is 220,477 tons; do you know a concern known as the Upper Lehigh Coal Company? A. Not on our line. I guess that is Kemmerer I think.

Q. Do you know a concern known as the Hazel Mountain Coal Company? A. Yes.

Q. Do you handle the production of that company? 1475
A. Yes, sir.

Q. Exclusively? A. Yes.

Q. And it is on your line? A. Yes.

Q. They are reported as shipping in the year 1912, 105,309 tons I see. Do you know a concern known as the Harleigh Brookwood Coal Company? A. Yes.

Q. And you handle all of their tonnage? A. Yes.

Q. And have you also built in to serve that colliery? A. Yes.

Q. They I notice shipped 74,659 tons that year. Do you know a concern known as the Wolf Coal Company? 1476
A. I don't know any such firm. There is an opening which I have heard said was Wolf, but there is no trackage.

Q. Do you transport any coal from there? A. No.

Q. Or from Thomas R. Reese & Sons? A. Now, at one time I think that Thomas R. Reese & Sons hauled coal in wagons and loaded cars.

1477 Re-Direct Examination by Mr. Machen:

Q. What is the nature of the structure at the connection with the Reading, between the Reading and Delaware, Susquehanna & Schuylkill that you referred to? A. The coal operations; they are stripping in there—what they call stripping is taking from the surface and getting the coal out of it close to the surface and mining it out in that way.

Q. That connection had not been used for some time before this stripping operation began, isn't that so—to
1478 any extent? A. I don't think it was used to any extent, Mr. Machen.

Q. When did this stripping operation begin; when did this construction commence? A. I cannot say.

Q. This last year or so? A. I should say possibly two or three years. It may not be that long. I don't know when it started.

Q. As far back as 1910? A. Possibly so. It is back in—I have seen it lately and there is quite an opening there now.

1479 Q. At any rate it was since 1905? A. Oh, yes.

Q. Did you have anything to do with the purchase of the Delaware, Susquehanna & Schuylkill for the Lehigh Valley? A. Not a thing.

Q. You didn't know anything at all about the motives for the purchase? A. I did not.

Q. Do you know how much coal the Delaware, Susquehanna & Schuylkill hauled; what their coal tonnage amounted to prior to their acquisition by the Lehigh Valley? A. No, I don't know what their tonnage was.

Q. You know it was over a million tons, don't you?
1480 A. I couldn't say. I don't know that I ever saw their output figures. Possibly I have, but off hand I cannot say.

By Mr. Boles:

Q. Do you know when the switch was removed at Roan Junction? A. No; it was only removed temporarily for —one reason was that having no connection with them there we usually take the switch and frog out; it batters it up when run over and there was no necessity for it.

Q. It was removed since this stripping operation be- 1481
gan? A. Yes, to the best of my recollection it was.

Q. And the only reason it is not in now is because it cannot be used and it would be an unnecessary maintenance expense to keep it in there when it cannot be used.

Note: It is agreed that the signatures of all witnesses on both sides are waived.

Note: It has been and hereby is stipulated and agreed by and in behalf of all the parties hereto that the fees of B. W. B. Brown, Special Examiner herein, be and are hereby fixed at $25 per day 1482
for each and any part of a day during which he has heretofore been or hereafter may be occupied in this case.

Sanders A. Wertheim, called on behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination by Mr. Gordon:

Q. What is your business? A. Coal. 1483

Q. Anthracite coal? A. Anthracite and bituminous.

Q. Where are your yards located? A. We have one on the Lehigh Valley at Grand Street and Pacific Avenue, and we have one at the foot of 115th Street and the Harlem River.

Q. The second is also the Lehigh Valley? A. No; the other is a water front proposition.

Q. What is the firm of L. Wertheim Coal & Coke Company; is that a corporation or a partnership? A. A corporation. 1484

Q. Are you an officer of that company? A. Yes.

Q. What? A. Secretary and treasurer.

Q. Are you also directly connected with the management of the business? A. Yes.

Q. That is, superintending the actual operations of the company? A. Yes.

Q. Your yard in Jersey City at Grand Street and Pacific Avenue is leased from the Lehigh Valley Railroad Company? A. Yes, sir.

1485 Q. And in fact, it is leased in two parts, is it not—under two separate leases? A. Yes, sir. I think there is two leases.

Q. There were two successive leases? A. Yes.

Q. Covering somewhat different premises? A. Yes; the first lease was on about half the property, and the second lease covered the other half.

Q. Do these leases contain a clause binding you to ship a certain amount of coal? A. Yes, sir.

Q. Over the line of the Lehigh Valley Railroad Com-

1486 pany? A. Yes.

By Mr. Machen:

Q. Is your company the lessee in the lease from the Lehigh Valley Railroad Company to L. Wertheim Coal & Coke Company, dated June 12th, 1906? A. Yes, sir.

Q. Is it the lessee in the lease from the same railroad company to L. Wertheim Coal & Coke Company, dated April 30th, 1908? A. Yes. I guess that is right. I am not sure about the dates, but there were two leases; the first one was followed by a second one.

1487 Q. And they expire at what time? A. I think they have about 18 years to run, 18 or 19 years.

By Mr. Gordon:

Q. Are these routing clauses still in effect to-day? A. Why, yes; they are in effect to-day, but at the present time they are not being enforced.

Q. Have they ever been formally cancelled? A. No.

Q. Do you know Mr. George H. Foster? A. Yes.

Q. Who is he? A. He was the real estate agent of the

1488 Lehigh Valley Railroad.

Q. Has he ever come to you and offered to release you from the obligation of those routing covenants? A. No.

Q. Has he ever written to you offering to do so? A. No.

Q. Has he ever sent any agent offering to do so? A. No.

Q. Or caused any agent to write a letter? A. No.

Q. Has any other officer of the Lehigh Valley Railroad 1489
Company ever written or caused anyone else to write to you offering to release you from those clauses? A. What do you mean? Do you mean this tonnage clause?
Q. Yes. A. No.

Mr. Boles: I think there may be some confusion about that. There are two clauses in the Wertheim leases, which should be referred to separately. One clause requires them to ship right over the Lehigh Valley and another requires them to ship 120,000 tons over the Lehigh Valley. Now, 1490
which clause are you referring to?
(Addressing Mr. Machen.)

Q. I was referring to both, or either of those clauses; as to any correspondence as to those clauses. A. No. We have not had any correspondence on that subject. That is right, not with our company, or with myself.
Q. Have you ever refused to allow that clause, or either of those clauses, to be stricken out of your lease? A. No, I could not very well refuse. Nobody——
Q. You have not had an opportunty to refuse? A. No. 1491
Q. Have you ever asked permission to ship over the lines of other railroads? A. Yes. I spoke to Mr. Grier a couple of times about it about two years ago when coal was a little scarce. I wanted to get some coal over the Pennsylvania Railroad.
Q. From what point? A. No particular point. Just asked whether it could be done. He said he was going to take it up with some one else and then, after a while, he told me they would not do that.
Q. He told you it could not be done? A. It could not 1492
be done, as near as I understand. I don't know whether that was the reason or not, but since then I understand that they have no freight rate in there. There is no rate into our plant over the Pennsylvania Railroad.
Q. The Pennsylvania Railroad comes near your plant? A. Well, the Pennsylvania Railroad comes within about a mile of our plant; but there is a connecting road that runs and connects with the Pennsylvania and goes by our plant.

1493 Q. So that there is a track by which coal coming from the coal regions via the Pennsylvania could be transported from the Pennsylvania lines and into your coal yard? A. Yes, it could be done.

Q. But there is no rate? A. There is no rate in effect there now. That is the way I understand, the way it is at present, the way it is at present and that may have been the reason for not allowing any Pennsylvania coal to come in there. Of course, they did not tell me that, they just told me that it could not be done.

1494 Q. Have you ever received coal coming from other lines? A. Yes, we have lately, but not prior to 1914.

Q. Do you have to pay switching charges on that coal? A. We did on some; 60 cents a ton, I think the extra charge was.

Q. How long a haul was that for which the 60 cents was charged? A. I should judge about 5 or 6 blocks.

Q. What size coal or sizes of coal? A. It was buck and barley.

Q. What is the rate from the anthracite coal regions to Jersey City for buck and barley? A. Well, on the

1495 Lehigh Valley the rate is $1.15 on barley and $1.25 on buckwheat coal.

Q. And yet for this haul, equivalent to a few blocks, they charged you a switching charge of 60 cents a ton? A. Yes, that was only coal they said there was no rate in there on. Of course, the Central have a rate into Grand Street, the same rate as the Lehigh Valley Railroad. I think it is the same rate—it is anyhow on buckwheat coal. Now, lately, that is, within the last two months, we have been getting Central coal in there, and

1496 getting it in at the rate of the Lehigh Valley rate, but this coal, I don't know what the reason of that was—that I cannot explain—there was a charge of 60 cents a ton extra. Now, whether it was shipped in some other way I don't know the idea of it.

Q. Then until recently, whatever the explanation may be, the fact was that if you shipped coal from the coal regions on other lines, and then had it switched over to you there in Jersey City, you were compelled to pay switching charges of 60 cents a ton? A. This was recently.

Q. How recently? A. Oh, within the last three or 1497
four months I guess. Now, you know, it may be that this coal that we had to pay this excess charge on, it may be—you see it originated on the Delaware & Hudson Railroad and there is a possibility that the Lehigh Valley Railroad haven't got any rate in there and naturally would charge for the switching of coal in—just the same as the present time—while they may be willing to let us get in Pennsylvania coal we have no rate in there. That is, you know, a direct rate on the tariff.

Q. You mean no direct rate from points in Pennsyl- 1498
vania to your yard? A. To our yard. A joint rate. So while they may be willing to let us get the coal in I guess they would, from what I understand now from a letter I have seen, there isn't any rate in the tariff that would allow us to bring it in.

Q. How long ago did you see that letter? A. Just now.

Q. Mr. Boles showed it to you? A. Yes.

Q. You never saw that letter until you came here? A. This is the first time I have seen the letter, to-day.

1499

Mr. Boles: Tell what the letter is now, because the record does not show what the letter is or anything about it.

Mr. Gordon: If you are going to put it in, you can put it in.

Q. Was that switching charge of 60 cents a ton absorbed by the originating carrier? A. I couldn't tell you; we paid the extra 60 cents, and that was the end of it.

Q. So it cost you the regular rate plus 60 cents? A. 1500
It cost us the regular rate plus 60 cents additional; but that was on just a certain number of cars, and then we found the rate would not cover it, that was the end of it.

Q. You never tried to bring in other coal at that figure? A. No, we brought in some Pennsylvania coal here about 5 or 6 years ago, and they wouldn't put it on our trestle and their excuse then—I forget just what it was—they wouldn't put it in—it may be now on ac-

1501 count of their not having this rate in there; that is the reason they wouldn't put the cars through.

Q. Could you explain that a little bit more fully? You say they wouldn't put it on your trestle? A. Well, now, I really don't remember. You see this coal it must have been in 1906, we had a little trouble getting coal there when we first started, and here was a cerain kind of coal that we wanted to get that we could not get over the Lehigh Valley Railroad.

Q. Did you buy of the Lehigh Valley Coal Company at that time? A. Not a car.

1502 Q. Do you buy of the Lehigh Valley Coal Sales Company now? A. We get a little, but very little; a very, very small amount of our tonnage is gotten from the Lehigh Valley Coal Sales Company.

Q. Go on and explain. A. Because at that time, as I said, we ordered these cars, because it was a size that we wanted and we could not get over the road, as we could get the size, but could not get the kind of coal we wanted, and we shipped them cars over the Pennsylvania Railroad to Communipaw on the same tariff as in effect

1503 to-day. The Lehigh Valley would not put it on our trestle. Now, they might have put it on if we would be willing to pay an extra charge on it. I wouldn't say that if we paid the addditional charges whatever the switching charges would be.

Q. But they would not put it on unless you did pay additional switching charges? A. I wouldn't say that, because I don't remember whether we asked them to make a rate in there. All I know is, we shipped the coal in there and we could not get it put on the trestle.

1504 Q. What became of it? A. We unloaded it by hand at the local station over there.

Q. Have you ever had any difficulty in getting sufficient car service? A. Oh, we have had a lot of trouble at different times.

Q. Is your company plaintiff in an action against the Lehigh Valley Railroad Company before the Interstate Commerce Commission? A. Yes.

Q. What is the ground of action in that case? A. I will tell you. There is a whole lot of ground. I really don't

know how I could go and explain the thing to you. What particular part of it do you want explained? 1505

Mr. Machen: Never mind.

Q. Have you ever attempted to purchase coal of the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company? We are getting some Lehigh Valley now, as I said, a small amount; we did some time ago, but they didn't have any coal for sale.

Q. Have they ever refused to sell you coal except at the prices higher than they have charged generally? A. They have refused to sell us coal, but they have never given us any quotation at the time of that refusal, so I could not say what they wanted for their coal. 1506

Q. They simply refused to sell it to you? A. They said they didn't have it.

Q. You testified that your leases contained a stipulation binding you, or purporting to bind you, to ship over the lines of the Lehigh Valley Railroad each year a specified minimum tonnage? A. Yes.

Q. Have you maintained that specified minimum tonnage? A. We have up to the strike here; that was in 1912. 1507

Q. Until the strike here in 1912, you maintained that specified minimum tonnage? A. Yes.

Q. Could you produce the figures? A. I have got the figures here of those five or six years. I have the tonnage here.

Q. Have you the figures also showing the amount which you were bound to ship each year? A. Yes.

Q. Will you read to the stenographer for each year the amount which you were bound to ship and the amount which you actually did ship over the Lehigh Valley Railroad? A. I have got our tonnage here to October 1st, 1907. That is the way my year winds up. That is on the tonnage year. That is the way my figures are made up. October 1st, 1907, 64,331.15; 1908, 97,478 tons; 1909, 104,937.02; 1910, 121,196.17; 1911, 131,958.18; 1912, 84,860.01; 1913, 89,069.03. 1508

Q. Are those gross tons or net tons? A. All net tons. All these figures are net 2,000 pounds to the ton.

1509 Q. And those dates you gave were the dates the years ended? A. The wind up of that particular year, yes. That was the way I applied it against the lease tonnage.

Q. Did you receive a subpoena? A. Wait a minute, please. I am mistaken in that. It is October 31, instead of October one.

Q. October 31, this year? A. October 31 of this year; that is the wind-up of the year.

Q. Did you receive a subpoena calling on you to produce some correspondence with the officers of the company? A. I did, but I cannot produce the correspond-

1510 ence, because all of our correspondence is with our attorney, and he is out of town, and we don't know just when he is going to be back.

Q. Did you bring copies with you? A. I just brought a copy of one particular letter that was to Mr. Middleton. The original letters of course—

Q. What did this correspondence relate to? A. It was in relation to our tonnage at Jersey City.

Q. What year? A. I think it was in 1912. No, 1911, this letter is.

1511 Q. Let me see that letter.

(Witness produces letter).

By Mr. Machen:

Q. What was the occasion of this correspondence; what caused it? A. We had a little trouble in getting our deliveries at that time, and there was some talk about putting up another trestle there; that is, in order to facilitate the deliveries of coal there, and that was how this tonnage correspondence started up.

1512 Q. You talked of putting up another coal trestle at Pacific Avenue and Grand? A. At the same place, yes.

Q. What did you want to do in consequence of that? A. The idea at that time was that if we got that other trestle they could make their deliveries over there easier, and we would have less trouble in getting our tonnage in there in order to do this tonnage.

Q. In order to comply with the clause in your contract requiring you to ship a certain number of tons over the Lehigh Valley each year? A. Well, of course,

were doing the tonnage then and the idea was to get 1513
the trestle in order to increase our tonnage and do more than we were doing.

Q. Did you ever apply to the Lehigh Valley Railroad Company, or any officer, for permission to have tonnage shipped to some other point than Pacific Avenue and Grand Street counted on your tonnage in your contract? A. Yes.

Q. When was that? A. That was around that time there. I guess around March, 1911, it must have been, or a month or so previous or so.

Q. What reply did you get to that application—that 1514
is the only letter you wrote to Mr. Middleton? A. That is the only letter I got there; I may have written other letters.

Q. Is the letter which I now show you the letter which you received from the Vice-President of the Lehigh Valley Railroad Company in answer to this application of yours? (Handing witness paper). A. (After examining paper). I am pretty sure that is the letter.

Mr. Machen: I offer this letter in evidence.

(Received in evidence and marked **Government** 1515
Exhibit No. 95).

Q. Is the letter which I now show you dated February 18, purporting to be signed by you, and addressed to J. A. Middleton, Esq., Vice-President of the Lehigh Valley Railroad Company, the letter which you wrote making the application for permission to have tonnage to Perth Amboy counted on your tonnage under your contract contained in the lease? A. Yes, that is the letter.

1516

Q. That is the letter to which the letter to Mr. Middleton, dated March 2, 1911, was the reply? A. Yes.

Q. Did you reply to Mr. Middleton's letter in writing? A. Yes. That is the reply that you have in your hand there.

Q. (After examination of paper). This is the reply to the letter of the 2nd.

Mr. Machen: I offer that letter in evidence, letter of February 11.

1517 (Received in evidence and marked **Government Exhibit No. 96**).

Mr. Machen: I offer in evidence this letter dated March 17, 1911.

(Received and marked **Government Exhibit No. 97**).

Q. What reply did you get of this last letter; did you get a reply in writing? A. I don't remember whether we did or not. I don't think we did. I think I saw Mr. Middleton about that.

1518 Q. What reply did he make orally? A. Well, he said that he would not—he wanted to control that situation there as far as we were concerned; he didn't want to make a definite agreement to let the coal come down to Perth Amboy.

Q. Do you remember the words he used? A. Why, the words to that effect, yes.

Q. Emphatically so? A. About those words.

Q. Have you made or caused to be made by any agent or attorney since Mr. Foster has testified in this case

1519 on June 24th, 1914, any application to any officer or employe of the Lehigh Valley Railroad asking to be relieved of the burden of the covenant requiring you to ship a certain given amount of tonnage over the Lehigh Valley Railroad to your yard at Jersey City here? A. Will you just ask me that again now?

Q. (Question read). A. Do you mean to get rid of this eighth clause that you are speaking about?

Q. Yes. A. No, not that I know of.

1520 Mr. Boles: Mr. Foster did not testify that he had any interviews, or made any approach whatever to the Wertheim Coal & Coke Company, as to changing their lease. If there is any dispute about that I wish you would put him on the stand right now.

Mr. Machen: We don't want to put him on the stand. The record speaks for itself.

Mr. Boles: The record speaks for itself, and I wish you would refer to the page; the page of the testimony is 141, 142 and 143. I will admit Mr. Wertheim's testimony is correct in the matter.

Q. In view of this statement, I will ask you, Mr. Wert- 1521
heim, this: Is it true that the Lehigh Valley Railroad Company, or any officer or employee of that Railroad Company, has applied to you for leave to strike out the clause requiring you to ship all coal tonnage or anthracite coal tonnage over the Lehigh Valley Railroad Company, and that you have refused to permit them to eliminate that clause? A. No, nobody has ever spoken to me about it.

Q. Did you ever refuse it on the ground that your lease was a long term lease, and that you declined to 1522
change it in any way? A. No, sir.

Q. Were you ever appraised that the railroad company was willing to make a new lease on the same terms, but without this so-called shipping or routing clause? A. No, sir.

Q. Were you ever given to understand by any officer or employee of the Railroad Company that they were willing to strike out this shipping or routing clause from the lease and leave the lease in all other respects on the same basis it is now? A. No.

1523

Mr. Boles: I object to all these questions on the ground that counsel is impeaching his own witness.

Cross-Examination by Mr. Boles:

Q. Mr. Wertheim, are you willing to modify your lease by striking out the tonnage clause or shipping clause thereof? A. Mr. Boles, if it was up to me, I would, but there is other people in the concern those things would 1524
have to be put up to first.

Q. Are you willing to recommend it to them? A. I would, yes.

Q. Does your recommend usually go to matters of that kind? A. Not in all cases, no.

Q. Is Mr. Eugene W. Leake your attorney? A. Yes.

Q. Is that his letter? (Showing witness paper) A. Yes, it is.

1525 Mr. Boles: I ask that this be marked for identification.

(Marked the **Lehigh Valley Railroad Company's Exhibit No. 6 for Identification.)**

Q. Do you know whose signature that is on that letter? A. No, it is not his, that is certain.

Q. Are there those connected with your company who do have authority to ask Mr. Leake for relief from the tonnage clause in your lease? A. Yes.

1526 Q. Who are they? A. It would really be done through me; that is, after I talked with the rest of the people there.

Mr. Machen: Who is interested in the concern?

The Witness: Mr. Delano, and Mr. Paine has control of the coal company.

Q. You don't know who asked Mr. Leake to write the letter of June 30th, about the tonnage clause? A. I didn't know there was any letter written about the tonnage clause. I thought there was a letter written about

1527 getting coal over the Pennsylvania Railroad.

Q. Did you ask him to write such a letter as that? A. About getting coal over the Pennsylvania Railroad.

Q. Was that letter written in pursuance of your request to Mr. Leake, that letter and including the letter marked for identification as Defendant's Exhibit No. 6, dated June 30th, on the letter-head of Hartshorne, Insley & Leake, and signed by Eugene W. Leake, per F.? A. Only as to getting the coal over the Pennsylvania Railroad.

1528 Q. Will you kindly look at that letter? A. (After reading letter.) This letter says something about the clause in the lease requiring Wertheim to ship all their coal over the Lehigh Valley Rairoad. There was no conversation as I remember about that at all; it was merely to find out whether we could ship over the Pennsylvania Railroad to our trestle. That was my idea of sending the letter to you at that time.

Q. Have you been advised in reply to that letter, as to whether you could receive coal over the Pennsylvania

Railroad? A. Leake told me you had written to him 1529
and said we could get coal over any railroad.

Q. Did you see the letter? A. No, I have not seen the letter.

Q. The letter which is marked Government Exhibit 97, dated March 17, 1911, says: "I beg to state that it would be entirely satisfactory to us if you would erase the clause"; had any conversation taken place prior to that time as to the erasure of the tonnage clause altogether? A. Why, no. Just let me see this letter. (After examination.) I think this clause meant in regard to 1530
the shipment down at Perth Amboy.

Cross-Examination by Mr. Warren:

Q. Mr. Wertheim, will you be kind enough to tell me as near as you can fix the time when it was that the Lehigh Valley Coal Sales Company, as you say, refused to sell you coal? A. I could not tell you the exact date, you know. I think the first communication they had with the Lehigh Valley Coal Company was—

Q. I am not asking you about the Lehigh Valley Coal 1531
Company; I understood you to say that the Coal Sales Company at one time had refused to sell you some coal, saying that they did not have it. A. I think there was one time that the Lehigh Valley Coal Sales Company stated they did not have the coal; that was, I am pretty sure, in the latter part of 1913.

Q. In other words, you asked them, I assume, to sell you a certain number of tons of certain designated sizes? A. Well, now, I don't know just how that was, whether we asked for a particular size or just asked for a quantity of coal. That was done through Mr. Delano. 1532

Q. Did you ever have occasion to refuse a customer because you did not have the coal that he asked you for? A. Did we?

Q. Yes. A. I don't remember ever refusing a customer because we did not have the coal, no.

Q. Do you mean to say that in all your experience a customer never came along and said he would like so many tons of a certain size, and you would say, "Well, I am sorry, but we haven't got particular quantity of

1533 that size now?" A. We may have had some one come along and ask for a certain kind of coal that we did not have.

Q. That is what I meant; it is not unusual, therefore, for a trading company not to be able to supply a given demand, at a given moment to a given customer, is it? A. I don't think that will be unusual, no.

Q. Now, one other thing. I notice in Government Exhibit No. 96, at the top of the letter, is what I call a trade device, this thing with a flag on it, and "W" in the centre, and red outside, and a sort of octagon shape,
1534 yellow exterior. A. Wertheim Coal & Coke Company.

Q. Jersey City? A. Yes.

Q. Is that what you might speak of as your trademark, or trade device? A. That is what we use, yes.

Q. It is not unusual, is it, for companies trading in anthracite coal to adopt some sort of device? A. Why, I wouldn't think so, no.

Q. It was not peculiar to your company, was it? A. I don't think so. I thought it was pretty good.

Q. Well, that is what I think. A. I certainly did.

1535

Cross-Examination by Mr. Boles (Continued):

Q. Mr. Wertheim, did you ever buy any coal from the Lehigh Valley Coal Company? A. The Wertheim Coal & Coke Company?

Q. Yes. A. Not that I remember.

Q. Never had any from the Lehigh Valley Coal Company? A. Not from the Coal Company, no. We did buy some coal, that is, when we were brokers; that is prior to the Wertheim Coal & Coke Company.

1536 Q. Was it prior to these leases? A. Yes, prior to those leases.

Q. What would you say was the total amount of tonnage which you had? A. Oh, very, very small.

Q. A car load? A. More than a car load.

Q. Ten cars? A. Why, I suppose it may be 10 or 15 cars.

Q. That is in the last two years? A. Yes, sir.

Q. You did not make any application for release from the shipping clause when you desired to ship tonnage over the Jersey Central, did you? A. No.

Q. You just shipped it over the Jersey Central? A. 1537
Just shipped it, that was all.

Q. And nobody ever called your attention to the fact that you were not shipping it via the Lehigh Valley? A. Never heard a word of it.

Q. And that has been for over three years? A. No, that has been for about a year.

Q. Did the figures which you presented a few minutes ago show— A. Those didn't include any Central coal at all.

Q. Haven't you been getting coal over the Jersey Cen- 1538
tral for some three years? A. No, the first car of coal we got over the Central was last December I think it was; that was the first lot of coal we got in there.

Q. Do you know how long it has been since your company has not shipped the amount of tonnage, the minimum amount of tonnage, specified in the leases? A. Not since—well, in 1912, of course that was a strike year—if we were to live right up to the letter of the law, there was three months we were tied down; we just about barely done our tonnage; in 1913 we done about 36,000 tons less than our contract called for, and this year it 1539
will be about the same unless conditions change.

Q. Prior to that that time? A. Prior to that time our books show that we have more than taken care of each lease.

Q. And that was in the natural course of your business? A. Yes.

Q. Have you any objection to telling us from what you were buying your coal prior? A. No; up to about 1909 we got most of our coal from Meeker & Company, East Boston Coal Company, and Mill Creek; it was kind 1540
of split up; but from about 1910 up to date, about 90 per cent of our tonnage has been obtained through the Mill Creek and East Boston Coal Company.

Q. As to the Meeker tonnage, did you have that delivered at Jersey City, or buy that at the mines? A. No, everything at the mines.

Mr. Machen: I think that is not proper cross-examination. How is that pertinent to any direct examination.

1541 Mr. Boles: I think it is pertinent to the shipping clauses, if you will let me go on with a few more questions.

Q. As to the Meeker tonnage, you bought that at the mines? A. Yes.

Q. And were those mines located on the Lehigh Valley Railroad? A. Yes.

Q. Do you know whether they were located on any other railroad? A. I couldn't tell you. It was the
1542 Stevens colliery; whether that is located on another road or not I couldn't say.

Q. Where is the Stevens colliery? A. It is up around Wilkes-Barre somewhere; I don't know the exact point of it at all. I think since that the Lehigh Valley Company bought that, or the Lehigh Valley Coal Sales Company, I am not sure.

Q. The coal which you bought from Meeker & Company did you route over the Lehigh Valley because that was the natural route for it, or because it was a requirement
1543 of this lease? A. Of course, we naturally take our coal over the Lehigh Valley Railroad, having this lease and having their property there, and having the connection there. I don't know what other way we would take it over.

Q. Is the Mill Creek Coal Company located on the Lehigh Valley Railroad? A. Yes.

Q. And is the East Boston located on the Lehigh Valley Railroad? A. Yes.

Q. Do you know whether any other railroad connects with those companies? A. The Mill Creek Coal Com-
1544 pany at their middle Lehigh, I thing they have a Pennsylvania connection there.

Q. How about the East Boston? A. I guess they got most any connection. I think they have D. L. & W. and Pennsylvania, both.

Q. In order for you to get tonnage, however, by the Pennsylvania and the D. L. & W., required an extra switching movement near Jersey City? A. I don't know how they would arrange that.

Q. The natural route for coal from the Mill Creek 1545
Coal Company and East Boston Coal Company is via the Lehigh Valley, isn't it? A. Yes; from those two companies via the Lehigh Valley.

Q. On page 51 of this petition, there is a statement that the Lehigh Valley Railroad Company has leased land adjacent to their tracks to large dealers or to consummers of anthracite at points such as Jersey City at excessively low rentals in return for the agreement by the lessees that they shall route all shipments in such manner as to give the Lehigh Valley Railroad Company 1546
the long haul——

Mr. Machen: Objected to as not proper cross-examination.

Q. You pay an excessively low rent for that trestle? A. I think we pay a pretty good rent with the taxes and with the improvements we have got on there, and the interest on the improvements.

Mr. Machen: And with the tonnage?

The Witness: I am talking about our rent now. 1547
He asked whether I thought we were paying good rent; I think we are.

Q. How do you compute that rent; that is, what is included in it? A. There is $100,000 investment there by the Wertheim Coal & Coke Company, and the Lehigh Valley had nothing to do with any of those expenditures, and we have got our taxes to pay, and they practically cost us eight or nine thousand dollars a year for the plant which will be on the average of the tonnage we 1548
have done pretty near 10 cents a ton.

Q. Then you don't think your lease ought to be mentioned under that allegation? A. You mean that we are getting it cheap?

Q. That you are getting it at an excessively low rent? A. Gee, I don't see where it comes in myself, I swear; where a fellow has got to go to work and spend a hundred thousand to improve the place, and you wouldn't want to pay no rent besides that, would you? I don't

know where you would come in; it is bad enough now.

Q. On page 55 of the Government petition, is an allegation, after various leases are listed in the petition, under which is mentioned your leases of 1908, the allegation reading as follows—referring to the leases—"Their purpose and effect has been to further the monopolization by the Lehigh Railroad of the transportation of anthracite coal from the regions served by it through discriminations in favor of coal dealers who give to it exclusively the routing of their shipments." Have you received any discrimination in your favor?

Mr. Machen: Objected to as not proper cross-examination.

Q. Have you received any discrimination in your favor given you by the Lehigh Valley Railroad? A. Not that I know of.

Q. You would know it if you received it, wouldn't you? A. I certainly would.

Re-Direct Examination:

By Mr. Machen:

Q. The Lehigh Valley Railroad would like to get rid of you as a tenant, wouldn't they? A. I imagine they would.

Q. They have made some effort to do so, haven't they? A. Why, they were talking about taking over our leases, taking the property here some time ago.

Q. And when you say that you pay a sufficient rental for the property do you take into account the fact that under the lease as drawn you are bound to ship a certain amount of tonnage over the Lehigh Valley each year? A. Yes, 120,000 tons.

Q. Mr. Boles has asked you about the various mines from which you get your coal; what is the character of coal which you deal in; I mean to say, is it what they call their free-burning White Ash coal? A. Some of it is free-burning, and the other is Lehigh.

Q. What do you mean by Lehigh? A. That is a harder grade of coal; harder than the free coal.

Q. That is the hard White Ash coal, isn't it? A. That 1553
is the hard White Ash coal.

Q. Do you know where that comes from exclusively; from what territory exclusively it comes? A. From the Lehigh regions as a rule.

Q. The regions around Hazleton? A. Up through that country.

By Mr. Boles:

Q. The Lehigh Valley Coal Company and the Lehigh Valley Coal Sales Company sell the same kind of coal 1554
as you deal in? A. Yes, about the same grade of coal.

Q. It is just as good for your purpose? A. Sometimes better.

Q. Better for your purpose? A. Yes; in a good many cases a whole lot better.

Q. What do you mean by saying that you think the Lehigh Valley Railroad would like to get rid of you as a tenant? A. Well, only from different little things that have come up in the last few years.

Q. They have never told you they were going to cancel 1555
your lease have they? A. Never.

Q. And they have not cancelled it? A. Never, no, they have not. I never heard the least talk in any way, manner, shape or form since it was signed outside these talks about the changing of our tonnage from Jersey City to Perth Amboy.

Q. Don't you consider that the improvement that you have put on the property, plus the taxes make an adequate rental for your lease of that land? A. I really think it is integral.

Q. You did not mean to say in answer to Mr. Machen 1556
that the fact that you had to route your shipments over the Lehigh Valley, or the fact that you had to route so many tons over the Lehigh Valley, according to the wording of that lease, made your rental any higher? A. Just ask me that over again?

Q. I say the fact that you had to route your shipments over the Lehigh Valley and the fact that you had to ship so many tons over the Lehigh Valley, did not cause your rental to be any higher? A. No, the same rental.

RECESS TAKEN UNTIL 2.15 O'CLOCK P. M.

1557 AFTERNOON SESSION.

Mr. Machen: We offer in evidence the following extracts from the annual reports of the Delaware, Susquehanna & Schuylkill Railroad Company to the Interstate Commerce Commission duly certified by the Commission, namely:

Income account of said company for the year ending June 30th, 1902.

Marked **Government's Exhibit No. 98.**

Income account for the year ending June 30th, 1903.

1558 Marked **Government Exhibit No. 99.**

Income account for the year ending June 30th, 1904.

Marked **Government Exhibit No. 100.**

Income account for the year ending June 30th, 1905, and comparative general balance sheet of June 30th, 1905.

Marked **Government Exhibit No. 101.**

Note: It is agreed that the formal certificate of the secretary of the Commission and seal shall not be copied or printed.

1559 It is admitted that Mr. J. F. Schapperkotter, formerly general solicitor of the Lehigh Valley Railroad Company was not counsel for the Delaware, Susquehanna & Schuylkill Railroad Company or for Coxe Brothers & Company, Inc., nor for the Coxe estate prior to the purchase of the stock of Coxe Brothers & Company and of the Delaware, Susquehanna & Schuylkill Railroad Company by the Lehigh Valley Railroad Company, although he may have acted for some of the parties in special matters other than the matter of
1560 the acquisition of the stock of Coxe Brothers & Company and of the D. S. & S. Railroad Company by the Lehigh Valley Railroad Company.

It is agreed that the officials of the corporations hereinafter named, if called, would testify to the following:

1. That the entire capital stock of the Philadelphia & Reading Coal & Iron Company and the Philadelphia & Reading Railway Company is owned by the Reading Company.

2. That of all the capital stock of the Lehigh & Wilkes- 1561
Barre Coal Company, the Central Railroad Company of New Jersey owns $8,462,650 out of a total of $9,212,-500.

3. That the entire capital stock of the Hillside Coal & Iron Company, and the entire capital stock of the Pennsylvania Coal Company, is owned by the Erie Railroad Company.

4. That the entire capital stock of the Lehigh & New England Railroad Company is owned by the Lehigh Coal & Navigation Company. 1562

5. That the entire capital stock of the Hudson Coal Company is owned by the Delaware & Hudson Company.

6. That the entire capital stock of the Susquehanna Coal Company is owned by the Pennsylvania Railroad Company.

7. That the Pennsylvania Railroad Company owns one-third of the capital stock of the Mineral Railroad & Mining Company, and the remaining two-thirds of said stock is owned by the Northern Central Railway Company, and that a majority of the capital stock of the Northern Central Railway Company is owned by the 1563
Pennsylvania Railroad Company.

That one-third of the capital stock of the Summit Branch Mining Company is owned by the Pennsylvania Railroad Company; the remaining two-thirds thereof by the Northern Central Railway Company; that the Summit Branch Mining Company owns $482,450, out of a total capital stock of $494,150 of the Lykens Valley Coal Company.

That the Susquehanna Coal Company owns $628,600 out of the capital stock of $800,000 of the Lytle Coal 1564
Company.

8. That the entire capital stock of the Scranton Coal Company and of the Elk Hill Coal & Iron Company is owned by the New York, Ontario & Western Railway Company.

This agreement is to have the same effect as if competent witnesses had testified as above, subject, however, in every case to all exceptions or objections to which such testimony would have been subject.

1565 Mr. Warren: I object to this evidence as incompetent and immaterial, as involving any of the issues affecting my clients.

Mr. Boles: I accede to the agreement as to what the witnesses would testify to, but would object to the statements as incompetent and irrelevant.

Mr. Machen: I offer in evidence in behalf of the Government the following quotations of bonds of the Lehigh Valley Coal Company and of the Lehigh Valley Railroad Company during the year 1905, which I read from the
1566 *Commercial & Financial Chronicle* of December 30th, 1905.

Mr. Wheaton: I object to it as immaterial and irrelevant.

Mr. Machen: 1. The Lehigh Valley Coal Company first guaranteed gold 5's June, 1913, interest payable January and July, range since January 1st, 1905, 115 low, 115 high; last sale June 5, 1905, 115. Price December 29, 1905, 114⅛ bid, no asking price given.

2. Lehigh Valley Railroad Company consolidated gold 4's due 2,003 interest payable May and November,
1567 range since January 1st, 1905, low 100¾, high 101⅞. Price Friday, December 29th, 100¾ sale.

3. I also offer the following quotations on the New York Stock Exchange for bonds of the Lehigh Valley Coal Company and Lehigh Valley Railroad Company for the year 1912, which I read from the Financial Chronicle January 4, 1913:

Lehigh Valley Coal Company first guaranteed gold 5's June, 1913, interest payable January and July, range for year 1912, low 106½, August 16; high 108 July 29. Price
1568 about January 12, 1912, 107¼ bid sales in 1912, $5,000.

4. Lehigh Valley Railroad consolidated gold 4's due 2,003 interest payable November and May, range for 1912 low 95½ September 21st; high 98½ May 21st. Price about January 2nd, 97 bid no asking price. Sales in 1912 $31,000.

I understand it to be admitted that the Financial Chronicle, from which I have read, is a reliable source of information as to stock and bond quotations; subject however to all exceptions as to the relevancy of the

above quotations, with the same effect as though they 1569
had been duly proved by a witness personally cognizant of the facts.

Mr. Boles: I admit that, but I object to the statistics as incompetent and irrelevant.

George Miller, recalled.

Direct Examination by Mr. Machen:

Q. In the percentages which you prepared and which 1570
are offered in evidence in connection with your former examination, marked **Government Exhibit No. 33**, did you include in the coal "mined, purchased and under sales contracts" by the Lehigh Valley Coal Company and affiliated companies the supply coal for the Lehigh Valley Railroad? A. The supply coal was included in the figures on which the percentages were based.

Q. How much did the supply coal amount to for the year ending June 30th, 1913? A. 792,325.09 gross tons.

Q. How much for the year ending June 30th, 1912? A. 1571
729,317.02 gross tons.

Q. In the statement which you have offered in evidence and in the accounting department of the Lehigh Valley Railroad, is the Bernice coal classified as anthracite or bituminous? A. It is included with the bituminous tonnage.

Q. I notice in the statements which you have handed me this afternoon and which, after being typewritten will be offered in evidence to-morrow morning, that you have included in the coal purchased by the Lehigh Val- 1572
ley Coal Company or Coal Sales Company, as the case may be, certain coal purchased from the Lehigh & Wilkes-Barre Coal Company. Is that the so-called exchange coal at Wilkes-Barre? A. No. That was the tonnage received by the Lehigh & Wilkes-Barre. I think that it was delivered to the Lehigh Valley at Sugar Notch.

Q. Is this coal the so-called exchange coal? A. I don't believe I could answer that question, because the exchange end of it was a coal company matter, and I could not say.

1573 Q. Why is it that the three mines of Coxe Brothers & Company, namely, Beaver Meadow, Drifton and Eckley, show a tonnage on these statements which you have prepared of only 500,000 or 600,000 tons, whereas Coxe Brothers & Company at the time of the purchase by the Lehigh Valley produced over a million tons per annum? A. The reduction is due principally to the discontinuing of several of the old breakers, and the moving of the unprepared coal from the Coxe Brothers mines to other collieries for preparation.

1574 Q. That is to say, the coal which is mined from lands formerly owned by Coxe Brothers & Company is prepared at breakers situated on lands belonging to the Lehigh Valley Coal Company and therefore, classified in your statement as derived from Lehigh Valley Coal Company collieries, is that correct? A. That is correct.

Q. So that these 500,000 or 600,000 tons from the three collieries, Beaver Meadow, Drifton and Eckley, represent only a portion of the coal mined during the years 1912, and 1913, from the mines belonging to Coxe Brothers & Company, Inc.? A. Correct.

1575 Mr. Boles: The Beaver Meadow colliery still prepares its own coal; the Drifton colliery still prepares its own coal; the Eckley colliery has its own coal prepared at the Hazleton shaft breaker of the Lehigh Valley Coal Company, but coal is still taken from the Eckley washery and the Eckley washery coal is the coal appearing in this statement. The Oneida coal is prepared at the Spring Mountain breaker, and the Derringer Mine coal is prepared at the Hazleton shaft breaker.

1576 Cross-Examination by Mr. Warren:

Q. This **Government Exhibit No. 33** to which reference has been made is a copy of a statement furnished by Mr. Smith of the Lehigh Valley Railroad Company and, as I understand it, to Mr. Coudert, at that time assistant to the Attorney General or something of that sort for the Government, in the Government's employ in some way, in February last, and in it it says: "I give you below the tonnage shipped by and on account of the Lehigh

Valley Coal Company, mined, purchased and under sales 1577
contracts for years ending June 30, shown below, and among the years are the years 1912 and 1913." In these figures making up this percent of total for the year 1912, 82.65 and for the year 1913, 82.09, there is at the end of the line a mark with a foot note to the effect that after March 1st, 1912, and for all of 1913, the sales company was operated, is there not? A. Yes, sir.

Q. So that the figures represent, without that explanation, the tonnage shipped by the Lehigh Valley Coal Sales Company, whether coal it had purchased from the 1578
Lehigh Valley Coal Company or whether it was purchased from Coxe Brothers & Company, Inc., or the Forty-Fort Coal Company, or any other producing company? A. It did.

Mr. Warren: That is all.

Hearing adjourned until Thursday, July 16th, 1914, at 10 A. M.

New York, July 16, 1914. 1579

Hearing resumed pursuant to adjournment.

APPEARANCES AS BEFORE.

Mr. Machen: We now offer in evidence, marked **Government Exhibit No. 102,** the accompanying extracts from leases of coal lands:

1. Lehigh Valley Coal Company to the Babylon Coal Company, dated January 1st, 1890;

2. The Lehigh Valley Coal Company to the Austin 1580
Coal Company, dated February 23, 1891;

3. Lease from the Lehigh Valley Coal Company to E. N. Willard and A. B. Stevens, dated January 28, 1899;

4. The Lehigh Valley Coal Company also to E. N. Williard and A. B. Stevens, dated January 28, 1889;

5. Lease from Lehigh Valley Coal Company to William Connell, dated August 18, 1889;

6. Lease from Lehigh Valley Coal Company to Martin J. Healey, dated January 5th, 1910;

1581 7. Lease from the Wyoming Valley Coal Company to Simpson & Watkins, dated February 1st, 1893;

8. Lease from The New York and Middle Coal Field Railroad and Coal Company, et al, to the Mid-Valley Coal Company, dated January 1st, 1889;

9. Lease from the Locust Mountain Coal and Iron Company to Louis N. Rieley & Company, dated January 7, 1889;

10. Lease from the Delano Land Company to Lentz, Lilly & Company, dated January 13, 1884;

1582 Marked **Government Exhibit No. 102.**

Mr. Machen: We offer these subject to verification by the defendants, and offer to include any portions of the leases which have been omitted, and which counsel for any of the defendants desire to incorporate in the record, and subject to any objection as to relevancy or competency which might have been available if the originals had been duly produced and proved.

Mr. Warren: It is agreed that from the numbers of the *Financial Chronicle* offered in evidence by the Government yesterday, or rather, extracts from which were

1583 offered in evidence, that the Lehigh Valley Coal Sales Company at this time call attention to the following:

From the issue of May 4th, 1912, page 47, under the title, "Miscellaneous Securities, Stock," D. L. & W. coal is quoted bid prices 365; asked price 375; Lehigh Valley Coal Sales, bid 240, asked 250;

From issue of July 6, 1912, page 47, under the same heading, "Miscellaneous Securities, Stock," D. L. & W. Coal bid, 387, asked, 397;

Lehigh Valley Coal Sales Company bid, 241, asked

1584 243.

From the issue of June 8th, 1912, page 47, under the head "Miscellaneous Securities, Stocks," D. L. & W. coal bid, 390, asked 400;

Lehigh Valley Coal Sales bid, 242, asked 245.

From the isue of January 4th, 1913, page 47, "Miscellaneous Securitiees, Stocks," D. L. & W. coal bid, 390, asked 400.

Lehigh Valley Coal Sales bid 220, asked 240.

Mr. Machen; On behalf of the Government we ob- 1585
ject to the relevency of any market quotations for D. L. & W. Coal Company stock, but interpose no objection as to the mode of proof.

Julius I. Morrison, recalled.

Direct Examination (continued).

By Mr. Machen:

Q. Mr. Morrison, when you were on the stand before 1586
you promised us to ascertain to whom and at what price and when the Lehigh Valley Railroad Company sold the $1,400,000 of the Lehigh Valley Coal Company upon which the rates of interest had been reduced by agreement between the coal company and the railroad company from 5 per cent to 4 per cent; can you give us this information now? A. Yes; that is right; $1,400,000 worth of bonds.

Q. Yes. Now, I am asking you at what price those
bonds were sold by the railroad company and to whom 1587
and when after the rate of interest had been reduced. A. I thought that information is shown in that statement.

Q. It is shown in that statement? A. Well, will you let me have the statement then?

(After examination of paper). Q. They were sold in 1905. 1904-5 wasn't it? A. 1905 they were sold to Drexel & Company at 95, being for $1,330,000, and the remaining $70,000——

Q. There was no remaining seventy thousand. A. 1588
There was a remaining seventy thousand; it shows so here.

Q. I asked you at what price those bonds were sold by the railroad company after the interest had been reduced; you say they sold at 95 to Drexel Company. Now, I want to ask you how the $98,000, which, from the evidence, it appears that the Lehigh Valley Coal Company paid the railroad company in consideration of the railroad company's assets to the reduction of in-

1589 terest from five to four per cent was made up or calculated?

Mr. Wheaton: Please note an objection, that it nowhere appears in evidence and it is not a fact that the $98,000 was paid in consideration of the reduction of interest.

Q. Instead of paying to the railroad company, I would say, for which the coal company gave to the railroad company its certificate of indebtedness in consideration
1590 and so forth.

Mr. Wheaton: The same objection is renewed. In fact, the question assumes that the certificate of indebtedness was given in consideration of the reduction of interest.

Mr. Machen: In view of this objection I will alter the question as follows:

Q. I now call your attention to the minutes of the meeting of the Board of Directors of the Lehigh Valley
1591 Coal Company held August 8th, 1905, which has been offered in evidence, together with other portions of the minutes of said company in **Government Exhibit No. 37,** and the minutes of that meeting read as follows:

"The President reported that to reimburse the Lehigh Valley Railroad Company for the depreciation in value of $1,400,000 of First Mortgage bonds of this company"—

that is the Coal Company—

1592 "owned by that company"—

that is the Railroad Company—

"by reason of the reduction of the rate of interest on said bonds from five to four per cent per annum, which results in a saving of interest of $392,000, this company had issued its certificate of indebtedness to the Lehigh Valley Railroad Company in the sum of $98,000 for value received, bearing date June 30, 1905."

Now, I want to ask you upon what principle or basis 1593
that $98,000 was calculated; can you tell?

A. I cannot tell offhand, but it is my impression—is it proper to state my impression?

Q. Yes, I have no objection.

A. That $70,000 was to reimburse the railroad company for the discount which they suffered in the sale of the $1,400,000 of bonds to Drexel, and the $28,000 was to pay them for the six months interest on the $1,400,000 at the rate of 4 per cent, being 2 per cent for six months.

Mr. Wheaton: Which interest was in arrears at 1594
that time?

The Witness: Yes.

Q. And then after the rate of interest on these bonds had been reduced they were sold to Drexel & Company by the railroad company?

A. For $1,330,000.

Mr. Boles: What was the face value of them?

The Witness: One hundred was the par value; the face value was $1,400,000. 1595

Q. And those bonds matured in 1933, I think. You testified, I think, on your former hearing.

A. If I did I must have had something to show; there is nothing here to show and I can not retain it in my mind.

Q. Let me ask you this question, please, Mr. Morrison: When you were on the stand before, you promised to look up and ascertain for us whether or not these $1,400,000 of First Mortgage bonds of the Lehigh Valley Coal Company upon which the rate of interest was reduced 1596
from five per cent to four per cent by agreement between the coal company and the railroad company, were part of the $10,500,000 which had been issued by the coal company to the railroad company as a satisfaction or funding of its indebtedness to the railroad company in 1893 for advances to this date.

A. Yes, it was.

Q. Do you know whether, since the acquisition of the Delaware, Susquehanna & Schuylkill Railroad Company

1597 by the Lehigh Valley any separate accounts were kept of the expenses and the earnings of the Susquehanna & Schuylkill?

A. No, sir, they are not kept. Yes, there is a separate corporate account kept.

Q. I mean the operating accounts.

A. The operating accounts are not definitely kept separate; no, sir.

Q. Isn't it true that the Delaware, Susquehanna & Schuylkill Railroad since 1905 in making its annual
1598 return to the Interstate Commerce Commission of its income, reports that its operations are included in those of the Lehigh Valley Railroad Company?

A. Yes, it is.

Q. You were also asked to ascertain the terms of the consolidation and merger of the Coal Ridge & Improvement Company, the Westwood Coal Company and the Hazelton Coal Company. Now, I want to ask you whether I have those transactions correct. Isn't it the fact that first the property of the Coal Ridge Improvement & Coal Company was sold under a foreclosure sale
1599 and bought in by the Lehigh Valley Railroad Company, which was the holder of all the mortgage bonds of the Coal Ridge, Improvement & Coal Company; is that correct?

A. I don't know whether it was purchased by the Lehigh Valley Railroad Company, and turned over to the Westwood Coal Company, or whether it was bought by the Westwood Coal Company itself at that time.

Q. It was either purchased by the railroad company—

A. Either one or the other.

1600 Q. Either purchased by the Westwood directly or purchased by the Lehigh Valley, and then transferred to the Westwood? A. Yes.

Q. So that the Westwood Coal Company came into possession of the entire property of the Coal Ridge Improvement & Coal Company? A. Yes, sir.

Q. And thereupon the Hazleton Coal Company which had been incorporated I think in the year 1895, was merged into the Westwood Coal Company, were they not? A. Yes, sir.

Q. And the consolidated company took the name of 1601
the Hazelton Coal Company? A. Yes.

Q. At the time of this merger the entire capital stocks, both of the Westwood Coal Company and of the Hazleton Coal Company, were held by the Lehigh Railroad Company, weren't they? A. Yes.

Q. And this merger took place in what year? A. I cannot positively say, but I think it was 1905—1904 or 1905, I don't know which.

Q. Isn't it true, that for a year or so prior to the foreclosure of the mortgage on the property of the Coal 1602
Ridge Improvement & Coal Company the Lehigh Valley Railroad Company had been purchasing shares of stock in the Coal Ridge Improvement & Coal Company? A. Yes.

Q. The holdings of the Lehigh Valley Railroad Company in the stock of the Coal Ridge Improvement & Coal Company had on June 30th, 1902, a par value of what amount? A. $807,550 common stock.

Q. And what was the par value of the stock of this company held by the Lehigh Valley Railroad Company on June 30, 1904? A. $1,346,950. 1603

Q. What was the holding in par value of the Lehigh Valley Railroad Company in preferred stock of the Coal Ridge Improvement & Coal Company on June 30th, 1902? A. $86,500.

Q. And what was the holding in par value of the same stock by the same company on June 30, 1904? A. $123,-275.

Q. Did the Lehigh Valley Railroad Company control the Coal Ridge Improvement Coal Company at the time of this foreclosure? A. I don't know. 1604

Q. It was a minority interest anyhow? A. I don't know.

Q. Look to refresh your recollection at the table which you have prepared, will you not, and say what disposition was made by the Lehigh Valley Railroad Company of the $10,500,000 bonds of the Lehigh Valley Coal Company acquired by the railroad company in the year 1893, bearing five per cent interest in satisfaction of the indebtedness due by the Coal company to the Railroad com-

1605 pany at that time? A. $9,100,000 worth was guaranteed —the interest was guaranteed—and they were sold to various parties in 1894 and 1895, for $9,069,287.50.

Q. That is to say, the Lehigh Valley Railroad Company, in order to sell these bonds guaranteed the interest and sold them at the price you have mentioned? A. Yes, that portion of them.

Q. And the difference between the par value of those bonds and the amount which they received, namely, about $30,000, was charged by the Lehigh Valley Railroad
1606 Company to profit and loss, were they not? A. Yes, sir.

Q. And the remaining $1,400,000 of these bonds, were the bonds on which the interest was reduced and about which you have testified at considerable length before? A. Yes.

Q. Have you ascertained since your previous examination what companies are included in the items in the Lehigh Valley Company's annual report under the head of Advances to other Companies; that is to say, advances to companies other than coal companies or subbsidiary
1607 railroad companies? A. I did get that information, but I haven't got it with me. I can send you that over tomorrow morning, a copy of it. I am making up those balances and I find them to be principally various subsidiary companies of the railroad companies, water companies, and the Glen Summit Hotel Company, and things like that.

Q. Various really subsidiary companies? A. Yes. There is one in particular that was a joint company, that was the Buffalo, Thousand Island & Portland, which is joint company with the New York Central.

1608 Q. In the annual report of the Lehigh Valley Railroad Company to the Interstate Commerce Commission under the head of freight traffic movement a statement is made showing the number of tons of freight exclusive of companies' material originating on the Lehigh Valley Railroad and received from connecting carriers, are they not? A. Yes.

Q. That table, of course, takes into account the number of miles that a ton of coal is hauled? A. No.

Q. That is to say, it counts as a ton of coal whether it is hauled one mile or a thousand? A. Yes.

Q. So that when we find in the annual report for 1913, 1609
that 14,679,793 tons of anthracite coal originated on the Lehigh Valley Railroad we get no information at all as to the length of coal hauled? A. No.

Q. That if the coal were hauled for one mile it would still rank as a ton? A. Yes, sir.

Q. And the same way with coal received from connecting carriers? A. Yes.

Q. When the statement is made as it is, in the report that the total anthracite coal received from connecting carriers amounted to 53,156 tons that means that all the 1610
coal received from connecting carriers amounted to that amount? A. Yes.

Q. Irrespective of the length of haul? A. Yes.

Q. Whether it was hauled one mile or fifty miles? A. Yes.

Q. Or a hundred miles or a thousand miles? A. Yes.

Q. Does that include coal switched—it necessarily does, doesn't it? A. I don't know; I don't believe it does.

Q. How otherwise could it—where would you draw the distinction to what is hauled by the Lehigh Valley loco- 1611
motives? A. Well, I would not swear that it was. That is all. There isn't any tremendous amount of coal received there anyway, and I don't think it much matters.

Q. The amount of coal switched is small? A. Yes, why it could not have been more than 57,000 tons according to that, even if it did include the switches.

Q. There is no distinction between the coal switched—A. I don't know whether that includes switched coal or not, because the switching revenue is kept under the order of the Interstate Commerce Commission under a 1612
separate account, and that may be for only freight revenue.

Q. Mr. Morrison, look at the annual report of the Delaware, Susquehanna & Schuylkill Railroad to the Interstate Commerce Commission for the year ending June 30, 1901, and won't you please state the number of tons of anthracite coal originating on the line of the Delaware, Susquehanna & Schuylkill Railroad during that year, and also the precentage of anthracite coal tonnage,

1613 to the total tonnage of that railroad? A. Tonnage, 1,897,839 tons.

Q. That is the anthracite coal tonnage? A. Anthracite coal tonnage. That was your question. Percentage 94.16 per cent.

Q. Look at the annual report of the same railroad company to the Interstate Commerce Commission for the year ending June 30th, 1905; will you give us the same information for that year? A. Tons, 1,844,986, percentage, 96.21 per cent.

1614 Q. That is to say, the anthracite coal tonnage is the amount which you have just stated and the percentage to the total freight tonnage is that which you have mentioned in your answer, is that correct? A. Yes, the Delaware, Susquehanna & Schuylkill Railroad.

Mr. Machen: Mr. Morrison having been requested on the former examination to produce certain statements as to the holdings of the Lehigh Valley Railroad Company in securities of coal and water companies, and as to the income received, and having produced such a statement,

1615 which, however, he states he is not prepared to say is absolutely correct, it is agreed that this statement may be revised by Mr. Morrison and filed with the Examiner and marked **Government Exhibit No. 103**, with the same effect as if offered at this time, subject to the right of the Government to interrogate Mr. Morrison as to any matters which may be pertinent to this statement.

Statement marked **Government Exhibit No. 103.**

1616 Mr. Machen: Counsel for the Government has requested the counsel for the Lehigh Valley Railroad Company to produce a statement showing the anthracite coal originating at points on and shipped over the Lehigh Valley Railroad, subdivided into—

1. Coal produced by the Lehigh Valley Coal Company or Coxe Brothers & Company, Incorporated;

2. Coal purchased by the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company;

3. Coal mined by the G. B. Markle Company; 1617
4. Anthracite coal mined by all other shippers.

The accompanying tables marked respectively **Government Exhibits Nos. 104 and 105** are produced and filed.

Note: It is agreed that the witness, George Miller, if present, would testify that he prepared the above-mentioned statements from the books of the Lehigh Valley Railroad Company and that the same are correct.

Mr. Boles: I agree to that. 1618

Cross-Examination by Mr. Boles:

Q. Mr. Morrison, will you look at the copy of the annual report of the Delaware, Susquehanna & Schuylkill Railroad Company to the Interstate Commerce Commission for the year ending June 30th, 1901, and state what officers of that company filed that report as the copy shows on page 817? A. Irving A. Stearns, the President, and J. Brinton White, treasurer.

Q. Do you know whether they were also officers of 1619
Coxe Brothers & Company at that time? A. Yes, they were.

Q. What positions did they hold? A. Irving A. Stearns was Vice-President, and J. Brinton White was the treasurer.

Q. And does the same question and answer apply as to the report of the Delaware, Susquehanna & Schuylkill Railroad for the year ending June 30th, 1905? A. Yes.

Q. Will you look at page five of the same report for 1620
1901 and state the names of the directors of the Delaware, Suquehanna & Schuylkill Railroad as there shown? A. Alexander B. Coxe, Henry B. Coxe, Henry B. Coxe, Sr., Irving A. Stearns, Henry B. Coxe, Jr., F. P. Wolverton, Alexander Brown Coxe.

Q. And will you state what the report shows as the number of the stockholders at the date of the last election? A. Seven.

Q. And what was the date of the election? A. January 14, 1901.

1621 Q. Will you look at page 7, and give us the names of the officers and the location of their offices as they appear? A. The President, Irving A. Stearns, 143 Liberty Street, New York City; Secretary, Arthur McClellan, Drifton, Luzerne County, Pennsylvania; Treasurer, J. Brinton White, 143 Liberty Street, New York City; Chief Engineer, E. Kudlich, Drifton, Luzerne County, Pennsylvania; Superintendent, L. C. Smith, Drifton, Luzerne County, Pennsylvania; General Freight Agent, John J. Meehan, 143 Liberty Street, New York City.

1622 Q. How many different officers are provided for by the report of the Commission? A. Thirty-three.

Q. And how many did the company have? A. Six.

Q. And of these six how many had offices located at 143 Liberty Street, New York? A. Four.

Q. What is the total mileage reported on page 9, and how is it made up? A. Delaware, Susquehanna & Schuylkill Railroad, main line 30.63 miles; branches and spurs 17.03 miles; Tamaqua, Hazleton & Northern Railroad, operated under lease, .41 miles; Lehigh Valley Railroad trackage rights, 132.88 miles; total mileage

1623 180.95 miles.

Q. Now, I show you the Delaware, Susquehanna & Schuylkill report for 1905, to the Interstate Commerce Commission and will ask you to state the names of the directors therein reported on page 5. A. Alexander B. Coxe, Edward B. Coxe, Henry B. Coxe, Jr., Irving A. Stearns, S. P. Wolverton, Alexander Brown Coxe, Charles E. Coxe.

Q. And what does the report state as to the number of stockholders at the date of the last election? A. Seven.

1624 Q. When was the date of the last election? A. January 9, 1905.

Q. How many officers did the commission's report provide for? A. Thirty-three.

Q. And how many officers did the company have? A. Seven.

Q. And how many of those officers had their offices at 143 Liberty Street, New York? A. Five.

Q. Was 143 Liberty Street, New York, at that time, the location of the general offices of the Lehigh Valley Railroad Company? A. Yes.

Q. What was the total main line as reported in that report? A. 30.63 miles. 1625

Q. And the total length of branches? A. 17.60 miles.

Q. And the length of the line operated under lease? A. .41 miles.

Q. And the length of the line of the Lehigh Valley Railroad over which the company had trackage rights? A. 132.88 miles.

Q. And the total mileage reported? A. 181.52.

Q. That takes in all classes? A. Yes.

Q. Will you look at page 17 of the 1905 report and state the total amount of capital stock issued and outstanding? A. $1,500,000. 1626

Q. And the dividends declared as they are reported? A. November 1st, 1904, 3%, $45,000; May 1st, 1905, 3%, $45,000; total $90,000.

Q. Wat amount of funded debt? A. No funded debt.

Q. Will you state the cost of the road to June 30th, 1905, as reported in that report? A. $1,187,076.43.

Q. And the cost of equipment? A. $946,307.73.

Q. Making a total of— A. $2,133,384.16.

Q. Will you look at page 83 and state the number of tons of freight which originated on the Delaware, Susquehanna & Schuylkill Railroad during the year ending June 30th, 1905, which represented the products of agriculture? A. 249 tons. 1627

Q. And which represented the products of animals? A. 185 tons.

Q. And which represented the products of mines? A. 1,844,994 tons.

Q. And which represented the products of forests? A. 3,161 tons.

Q. And which represented the products of manufactures? A. 3,550 tons; miscellaneous, 250 tons. 1628

Q. And what the total tonnage originating on the Delaware, Susquehanna & Schuylkill, how much? A. 1,854,339 tons.

Q. And if you deduct the products of mines, or if you deduct the amount of anthracite coal from that total what remains to represent all other tonnage? A. 9,373 tons.

1629 Q. Now, will you on the same page take the total which represents the freight originating on the road and the freight received from connecting carriers and tell us the amount? A. The total freight tonnage, including that originating on the Delaware, Susquehanna & Schuylkill, and all freight received from the connecting roads and other carriers for the year was 1,878,756 tons.

Q. Will you deduct the amount of anthracite from that and tell us the balance remaining? A. 33,770 tons, representing all freight other than anthracite forwarded and
1630 received by the Delaware, Susquehanna & Schuylkill Railroad.

Q. Of the freight other than anthracite carried during that year in carload lots what amount was grain? A. 748 tons.

Q. What amount was hay? A. 1,047 tons.

Q. What amount was bituminous coal? A. 185 tons.

Q. What amount was lumber? A. 6,581 tons.

Q. And is there any other tonnage reported other than anthracite and those you have mentioned? A. No.

Q. How many passenger locomotives are reported? A.
1631 One.

Q. And how many freight locomotives? A. 22.

Q. And how many coal cars? A. 1,367.

Q. And how many other freight cars? A. Eight.

Q. And how many dump cars? A. Three.

Q. How many derrick cars? A. One.

Q. How many caboose cars? A. Seventeen.

Q. How many combination cars? A. Three combination passenger cars.

Q. Making a total of how many cars in the service?
1632 A. 1,399.

Re-Direct Examination by Mr. Machen:

Q. Mr. Morrison, Mr. Boles asked you a number of questions as to the number of officers provided for in the forms of reports of the Interstate Commerce Commission, the number of officers actually reported by the Delaware, Susquehanna & Schuylkill Railroad prior to its acquisition by the Lehigh Valley Railroad. Now, I

want to ask you to look at the report of the Lehigh Valley Railroad Company to the Interstate Commerce Commission for the year ending June 30th, 1905, and read it and tell us in how many cases the Lehigh Valley Railroad answers "none" to a blank given for the name of the officer? A. Eleven. 1633

Q. Do you know whether the Delaware, Susquehanna & Schuylkill Railroad Company prior to its purchase by the Lehigh Valley Railroad Company carried any anthracite coal originating on its line other than that shipped from the mines operated by Coxe Brothers & Company? A. Yes, it did. 1634

Q. What other mines did it serve? A. I can't say right offhand, but there was Pardee had some mines up there and there was one other quite large business—two of them.

Q. Do you mean the Wolf colliery? A. I don't think that is the one I mean. There are two of them. The Harwood is one and——

Q. Perhaps this paper will refresh your recollection. A. (After examination of paper.) There is Lattimer and Harwood. 1635

Mr. Gordon: Which Pardee is that?

The Witness: Pardee Brothers & Company, and A. Pardee & Company. There are two of them.

Q. And the Delaware, Susquehanna & Schuylkill served these two mines in addition to the mines of Coxe Brothers & Company? A. Yes.

Q. Won't you look at the annual reports of the Delaware, Susquehanna & Schuylkill Railroad Company from the year 1900 down to the time of the purchase and read off consecutively the number of tons of anthracite coal transported each year originating upon the line of the Delaware, Susquehanna & Schuylkill Railroad. A. June 30th, 1900, 1,905,589 tons; for the year ending June 30th, 1901, 1,897,839 tons; for the year ending 1902, 1,455,700 tons; 1903, 1,270,568 tons; 1904, 1,692,626 tons; 1905, 1,844,986 tons. 1636

1637 By Mr. Boles:

Q. Referring to the Lehigh Valley Railroad Company's annual report for the year ending June 30th, 1905, how many additional officers are provided for here which are not in the Commission's report?

Mr. Machen: You mean not on the Commission's form?

Q. Not on the Commission's form? A. Seven.

Q. You said that there were eleven answers in the

1638 form of none; is one of those Chairman of the Board? A. Yes.

Q. Is another Third Vice-President? A. Yes.

Q. Is another general counsel? A. Yes.

Q. Did the company have a general solicitor? A. Yes.

Q. Is another comptroller? A. Yes.

Q. Who performed the duties of that office? A. The General Auditor.

Q. Was another assistant comptroller? A. Yes.

Q. Was another assistant general manager? A. Yes.

Q. Was another assistant general superintendent?

1639 A. Yes.

Q. Was another general ticket agent? A. Yes.

Q. Who performed the duties of that office? A. The general passenger agent.

Q. Was another assistant general ticket agent? A. Yes.

Q. Was another superintendent of express? A. Yes.

Q. Was another land commissioner? A. Yes.

Q. Who performed the duties of that office? A. The real estate agent.

1640

By Mr. Gordon:

Q. Mr. Morrison, I understood you to testify that in the organization of the Lehigh Valley Railroad Company the duties which are in many railroad companies performed by the comptroller are performed by the comptroller are performed by the general auditor? A. The duties which were formerly performed by Issac McQuilken, the former comptroller of the Lehigh Valley Railroad are now performed by the general auditor.

There was no general auditor when Mr. McQuilken was 1641
comptroller; instead of that there is a general auditor now who performs his duties.

Q. Are you the general auditor? A. Yes.

Q. Is it one of your duties as general auditor to know about and supervise the payment of freight rates by coal companies which ship over the Lehigh Valley Railroad Company? A. Yes.

Q. Did you prepare for the Interstate Commerce Commission the answer submitted by the Lehigh Valley Railroad Company to question No. 35 in the I. C. C. 1642
Docket No. 4914, which reads as follows: "Question No. 35. Give for each month from August, 1909, to November, 1912, inclusive the amount of freight charged on all anthracite coal transported for, and date of payment of, each month's charges by each of the following shippers." Then naming among others, Lehigh Valley Coal Company? A. Yes, I prepared the answer to that.

Q. Is this the answer which you prepared (showing witness paper)? A. Yes, this is the answer.

1643

Mr. Gordon: I offer in evidence this answer to be marked **Government Exhibit No. 106.**

Q. Does it appear in your answer to question No. 35 that the Lehigh Valley Railroad Company was accustomed to extend credit to the Lehigh Valley Coal Company for the payment of freight charges during the periods named in your answer? A. It was the custom for the Lehigh Valley Railroad Company to make bills against the Lehigh Valley Coal Company for those charges and from time to time the treasurer collected 1644
the charges and the dates on the statement show the time the money was paid.

Q. Look at this statement to refresh your recollection, does it appear from this statement that the interval which elapsed between the dates on which the freight charges became due and the dates on which they were paid were frequently 30, 60 and 90 days? A. What period are you looking at?

1645 Q. Period from August, 1909, to November, 1912? A. Yes; during that time there was periods when it ran 30, 60 and 90 days.

Q. Did this practice prevail up to the time of the formation of the Lehigh Valley Coal Sales Company? A. No, not to that extent, because it shows later there that they paid their coal tolls——

Mr. Boles: Take the whole of the year 1911 and state it exactly.

1646 A. The year 1911, for instance, the January coal tolls were all paid in February, and paid promptly. You see, for instance, January, the first week's tonnage, was paid on February 1st, and the second week's tonnage on February 17th. February, for instance, were all paid in March; March tolls were paid in April and none of them later than the 27th and some of them on the 12th, and that runs throughout the year.

Q. Then in the year 1912 the coal company had received about thirty days in which to pay its bills? A. In
1647 February, 1912, or in the month of 1912, as you understand, the business was turned over to the Sales Company, so there wasn't any in 1912 to speak about.

Q. Turning to the month of September, 1912, when were those—— A. Those were from charges on—those are not coal tolls at all. Those are regular freight charges secured at various stations on inbound shipments.

Q. Does your answer also include the matter of payment of freight charges by the Lehigh Valley Coal Sales Company? A. Yes.

1648 Q. Turning to your answer to refresh your recollection, has the Lehigh Valley Railroad Company been accustomed to permit the Lehigh Valley Coal Sales Company also to take 30, 60 and 90 days to pay its freight charges in the year 1912? A. No.

Q. Look at the month of September, 1912, and tell how much the freight charges of the Coal Sales Company were for that month? A. The total was $1,187,357.

Q. When were those charges paid? A. They were paid on varying dates from November 1st to December 2nd

and, of course, take some—those are rendered by weeks 1649
and they are some days in preparation; you cannot make a statement of the bills for $207,000, you know.

Q. Taking the month of October, 1912, when were those freight charges paid? A. They were paid on dates ranging from December 9th to 19th.

Q. And how large were the bills for that month of October? A. $1,238,536.08.

Q. Taking the month of November, 1912, when were the freight charges accruing during that month paid? A. They were paid from December 21 to January 2nd. 1650

Q. And how large were those freight charges for that month? A. $1,472,985.65.

Q. Does the Lehigh Valley Railroad Company extend similar credit to other shippers of anthracite coal along its lines? A. I don't know that it does.

Q. What is its practice in regard to other shippers? A. The practice is now—at that time that was the practice—but that was corrected just about that period and we immediately after that made the Lehigh Valley Sales Company pay their freight charges by accepting a draft from us within a week or within three or four days after 1651
the end of the week, which is the customary practice with others, excepting with one or two cases. I think Pardee sends remittances; we don't draw on Pardee, and I think Markle perhaps does the same—one or two of them. But the Lehigh Valley Sales Company from that period spoken of up to the present time, is paying its freight charges prompter than most any other shipper on the road.

Q. Your general practice then is and has been to render weekly bills and to require payment by draft within a 1652
few days after the rendition of the bills? A. Yes, of late, yes.

Q. What was it in former times for other shippers than the Lehigh Valley Coal Company? A. For other shippers than the Lehigh Valley Coal Company and Pardee and one or two others I cannot just recall—I think Markle was one of them as I said—was to draw within about a week or ten days of the shipment.

1653 Q. Within a week or ten days of the time the freight charges accrue? A. Yes.

Q. And did you require a bond for the prompt payment of those charges by other shippers? A. No, sir, we did not require bonds from shippers.

Q. Do you require bonds to-day? A. No, from nobody.

Q. But you do enforce prompt payment? A. Why yes.

Q. In fact you transacted your business on a substantially cash basis considering all the difficulties of the
1654 case? A. Well, yes, I think I could say that.

By Mr. Machen:

Q. Did Markle and Pardee— A. I wouldn't say positively Markle; I said possibly Markle, but Pardee I positively know makes settlements because he makes them still that way.

Q. I am not speaking as to the manner of making them pay; how soon did he make them? A. They make their payments within a couple of weeks or three weeks I think.

1655 Q. Aren't the freight rates on the Markle coal paid by the Lehigh Valley Coal Company now-a-days by the Lehigh Valley Coal Sales Company? A. I don't know. Some other shipper up there besides—I don't know whether it was Markle or not; that is what I am not clear about.

Q. But only one or two, that is Pardee and perhaps one or two-- A. Yes; there are only one or two that don't pay by draft.

Q. Which Pardee was this, A. Pardee? A. I don't
1656 remember.

Q. Pardee Brothers? A. I cannot tell you which Pardee. I can tell you in fifteen minutes if I were up at the office, but I cannot tell you here.

Recess taken until two thirty o'clock P. M.

AFTERNOON SESSION. 1657

Julius I. Morrison, recalled.

Re-Cross Examination by Mr. Wheaton:

Q. The answer to question No. 35, I. C. C. Docket No. 4914, indicates that freight charges on anthracite coal had been paid by the Lehigh Valley Coal Company to the Lehigh Valley Railroad Company since the first day of March, 1912. Now, those charges are for services in the nature of switching charges, aren't they? A. Yes, sir. 1658

Q. Is this correct under the circumstances; the Lehigh Valley Coal Company brings to the surface some coal through a shaft opening or slope opening and that is hauled in a few places by the Lehigh Valley Railroad to the breaker for preparation, is that right? A. Yes.

Q. And these charges that are set forth in this answer to question No. 35 are for freight on that kind of a haul? A. Yes.

Q. The Lehigh Valley Coal Company does not sell that coal, that is not coal sold to anybody or send it to market or anything like that? A. Not at all. 1659

Q. Simply haul it in the rough a short distance for the purpose of being put into the breaker for preparation? A. Yes.

Q. And it is all carried at a short distance from the place where it is brought to the surface and entirely in the State of Pennsylvania? A. Yes.

Q. It is within our limits, isn't it? A. Yes, it is within a few miles of the breaker. For instance, we don't have a breaker at every mile, so we have to haul the coal from the mine to a breaker close by and that is in order, to be exact, in the preparation of this statement for the Government the clerks delved into everything we had and that was in it. 1660

By Mr. Machen:

Q. That was coal which came from the mine in the rough?

A. Yes, exactly, with the slate and everything in it.

Q. And it was hauled by Lehigh Valley locomotives over the Lehigh Valley tracks to a breaker situated at a distance of a mile or so?

A. Yes.

Q. From the mouth of the mine?

A. Yes, about a mile or two from the mouth of the mine. I don't know where that breaker was; it might not be at the mouth of the mine.

Q. But it is hauled for a mile or so from the mouth of the mine out of which the coal comes?

1662 A. Precisely, sir.

Q. And that coal is the output of that particular mine?

A. Yes.

Q. It embodies coal which is consumed locally and also coal which is, after being prepared, shipped to the market by the Lehigh Valley Coal Sales Company in Pennsylvania or elsewhere?

A. Yes, it is the entire output of the mine.

Q. And it is transported and sold after having been prepared wherever coal is sold?

A. Yes.

1663 Q. In other states and Pennsylvania and elsewhere?

A. Yes.

By Mr. Wheaton:

Q. Isn't it quite as likely that it would be hauled over the tracks of the Lehigh Valley Coal Company as over the tracks of the Lehigh Valley Railroad Company; in other words, those mine tracks from the opening to the breaker are sometimes of the Lehigh Valley Coal Company, aren't they? A. Yes.

1664 Q. And, therefore, this haul might be over the tracks of the Lehigh Valley Coal Company with the Lehigh Valley Railroad engines? A. Yes; it might be, but I would be of the opinion that it would be in our case a part of the railroad company's tracks, or a part of the way.

By Mr. Warren:

Q. Counsel for the Government stated that this coal that was hauled from the mouth of the mine to the break-

ers ultimately, after preparation, was shipped and might become an interstate shipment. Now, I want to ask you about this; isn't it the fact, that the coal—when you speak of it being coal in the rough, it is the contents of the mine car which contains the impurities, the slate, the rock and the coal? A. Yes, but—— 1665

Q. Wait a minute; let me ask you a question—and that when that material gets through the breaker itself then out of that material is prepared a certain proportion of the material for sales and shipments, isn't that the truth about it? A. Yes. 1666

Q. So that it is not material that is transported from the mine to the breakers that becomes the material that goes as merchantable coal to, in some instances, interstate; it is only some part of the breaker—that mine car—that is made into merchantable coal, isn't that right? A. Yes. I want to say further that the rate from the mine to the breaker is a distinct and separate rate and in no sense is it any portion of the final movement from the breaker to destination at an interstate point; but it is merely a local switching movement of a rough commodity to a manufactory where it is prepared in shape for final shipment, and that in final shipment the interstate rate applies and has no relation whatever to the switching rate, which I speak of as moving it from the mine to the breaker. 1667

By Mr. Boles:

Q. What has been your practice as to sending statements to the Lehigh Valley Coal Company and Lehigh Valley Coal Sales Company on their freight charges? A. The practice has been to send both of them for a great many years a statement once a week. 1668

Q. Would you send it, we will say, on Monday for the previous week? A. No; I should say we would send it perhaps on Thursday or Friday for the shipments of the previous week, because the agents—we have got to get that data in hundreds of thousands of tons after the business moves at the end of the week, and have the clerical force prepare it, and it is three or four days in preparation and as soon as it can be prepared it is the

1669 duty of the clerk in charge to render the bill against the Lehigh Coal Company and everybody else for the coal shipments of that region.

Q. Have you any other shipper on the line other than the Lehigh Valley Coal Sales Company that is shipping from 30 or 40 different points and all of whose shipments —that is, all of the data in respect to these shipments— must be collected in order to make up the final bill? A. No.

Q. Would it be a matter of great expense to you and
1670 far more than the loss of interest for a month or so on this money to send them a separate bill in respect of every manifest? A. Oh, that would be a ridiculous thing to do; we don't do that for anybody. We have the same thing with regard to other merchandise shipments than coal. We have the same arrangement at nearly every point on the Lehigh Valley Railroad. We have what they call the credit list and members are extended credit, some of them by the week and some of them by two weeks and others by the month, and at the end of the month they make a settlement of their bills which
1671 are rendered to them as the game goes along. They get a statement of it and at the end of the month they make the settlement.

Q. In some of these cases, the Sales Company appears to have paid statements before the end of the month, doesn't it? A. Well, I don't know just how that is. I noticed that, but I don't think there is any case where really the money is paid before the bill is presented.

Q. Here is a bill for the first week in May of $2,486.60 which was paid on May 28th, wasn't it? A. Yes, but it
1672 was rendered the first week.

Q. But it was paid before the end of the month? A. Oh, yes; that was frequently the case.

Q. After you send out these statements for the previous week's shipment is it your duty to enforce collection? A. As far as I can and when I cannot I turn it over to the legal department. I certainly do. Of course, I don't do that until I have tried to make collection. We have got hundreds and hundreds of dollars on the books all the time of this kind.

Q. Did you ever speak to the President of the Lehigh Valley Coal Sales Company about the fact that he was not paying his statements as promptly as you thought he ought to? A. I went after—not the president at that time, he was vice-president, he is president now—this was how we came to change it: I came over here and found fault with his not paying his bills as promptly as he ought to and I told him that they had to be paid up and we must get our money, and he said well, I will pay it up. Well, I said, you'll do more that that because I am going hereafter to make statements with you like other shippers and draw on you; and we talked it over and he finally consented to that and to pay up, that is, all the bills within a short time, and after that we drew on the Lehigh Valley Coal Sales Company exactly the same as we do on small shippers on the railroad. 1673 1674

Q. He didn't say anything about being hard up, did he, and didn't have the money? A. No, no; he didn't say so.

Q. Then it was not an extension of credit you were giving him, was it? A. I felt as if he ought to pay more promptly and that is the reason I went after him; it was my business to do it. 1675

Q. He didn't say the reason he had not paid was because he did not have the money? A. He positively did not.

Q. And he didn't say the reason he had not paid was because there was any understanding with you or any other officer of the railroad that he should not pay? A. Not at all; not at all. He never made the least demur about the amount not being properly due or any reason why it should not be paid. 1676

Q. Are there other shippers on the Lehigh Valley who fail to pay their bills within thirty and sixty days? A. Frequently.

Q. Many of them? A. Yes, plenty of them.

Mr. Machen Who?

The Witness: Why, there is some of them that never pay. We have to charge that to profit and loss. I have charged off $40,000 or $50,000 of that kind of stuff in the last two years.

1677 Q. Are there some of them that can afford to pay who do not send their remittance as promptly as you think they ought to? A. Yes, and then get sore when I want them to sometimes.

Q. And some of them who can well afford to pay who did not send their remittances during the year 1912, any faster than the Lehigh Valley Coal Sales Company? A. Yes, there is some.

By Mr. Warren:

1678 Q. Mr. Morrison, my client, the Lehigh Valley Coal Sales Company appears, notwithstanding your criticism of it according to this Government Exhibit which is your answer to question No. 35, to have paid practically your freight bills as rendered to them within thirty days from their starting in business for the first several months, isn't that true? A. Yes, they did.

Q. But they seem to have dragged a little bit when it came near the fall of 1912? A. Yes, that is right; that is how I got after Mr. Wilson.

1679 Q. You don't mean to be understood as saying that you ever gave the Sales Company a credit of sixty or ninety days? A. Why, no, sir.

Q. What you mean to say is that you were unable to get us to pay you the bills for these two or three months A. Precisely.

Q. Was it about the month of November, 1912, which is the last month referred to in this answer, that you inaugurated the system of drawing drafts upon them? A. I wouldn't say positively as to that. My recollection does not serve me, but it is within a month or two after

1680 that at least. It was in the early part of 1913.

Q. All right then. Then for all of 1913 and all of 1914, up to this date your practice passage has been, as I understand it, this: about the 7th, 14th, 21st, and 28th of each month you draw a draft upon them for the coal that you have carried for them the week next preceding those several days, isn't that substantially right? A. No, sir. On about the third day after the close of each week —the weeks ending on the 7th, the 14th, the 21st, and the last day of the month, on the third day after those peri-

odis I say we prepare a statement and send to the Le- 1681
high Valley Coal Sales Company and to nearly every other shipper, and the next day I draw a draft on them for that amount at sight and it is paid.

Q. How long after it is drawn is it paid and has it been? A. It is drawn about the 4th day after the close of each of those weekly periods and it is paid on presentation. I never hear from it.

Q. It is paid say the next day then? A. It is good for cash in the bank when I put it in; I never hear of it.

Q. It is a matter of a day or two to collect I suppose? 1682
A. Yes.

Q. You deposit it in Philadelphia, do you? A. I deposit it in Philadelphia and it is paid in New York.

Q. And I am right in saying, am I not, that it would be a matter of 24 hours for the collection to take place between Philadelphia and New York in the bank? A. Yes; but I am not interested in that; I get my credit in cash immediately and undoubtedly the bank collects it the very next day.

Q. Now, I understand you to say that it has been the invariable custom since about the first of January, 1913? 1683
A. Yes.

Q. And you have no complaint to make then of the Lehigh Valley Coal Sales Company in the matter of any possible hanging back in their payments of your freight charges against it since a year ago last January? A. Not since that, no, sir.

Q. And has your treatment of that company been the same in the matter of billing your freight charges since March first, 1912, on the same basis and in conformity with the same manner as with all other shippers on your 1684
road? A. Yes.

Q. I presume when you speak of extending credit, as you used that expression in answer to Mr. Boles this morning, you mean that you do not exact payments in cash upon doing the work, upon carrying the freight, if you have a customer that you assume is entitled to a reasonable credit; in other words reasonably sound financially, I mean? A. No, we don't do that. A man desires to make a weekly settlement or a monthly set-

1685 tlement; he requests what is known as accomodation or extension of credit. Now generally, if he is found to be reliable in Bradstreet & Dunn's agency, we authorize the agents to extend to him this credit with the understanding that it must be paid within a certain number of days after the end of a period, and if the agent does not get his money it is his duty and invariable custom to notify the treasurer of the company and he takes it up with the party by letter and gets the money as soon as he can.

1686 By Mr. Boles:

Q. Or else cross him off the credit list? A. Yes; if he just will not pay we take him off the credit list.

By Mr. Warren:

Q. Have you any knowledge of any discriminatory favors to the Lehigh Valley Coal Sales Company by the Lehigh Valley Railroad Company since March 1st, 1912?

Mr. Machen: Objected to as calling for an

1687 opinion and too general.

Q. Have you? A. Why, the positive rule in the accounting department of the Lehigh Valley Railroad from the President is that no discrimination must be exercised to the Lehigh Valley Coal Sales Company or anybody else on the Lehigh Valley Railroad, and if there was a thing like that the revising clerk or the man in the accounting department who would not call attention to it would be immediately discharged.

Q. So that you can say no? A. I can positively say

1688 no to anybody.

By Mr. Machen:

Q. Mr. Morrison, to revert to the matter of the coal transported from the mouth of the mine to the breaker for the Lehigh Valley Coal Company, this coal, you say, comprises the entire output of certain mines?

Mr. Warren: I object to that, because he did not say that.

A. I say it includes all the culm and the slate and the 1689
other debris that is in coal, and it comes from the mine and the man in charge of the coal company will deliver it to us into the car, the Lehigh Valley Railroad Company car. Now, it might be that the Lehigh Valley Coal Company uses right on the ground a portion of the output of the mine—judging from here they sell it right on the ground. I don't know a blessed thing about the Lehigh Valley Coal Company; all I know is that we get this rough coal, what you might call run of the mine anthracite coal before it is cleared and prepared, and it is 1690
put into trains you might say; then we hitch an engine onto it and haul it over to the breaker and set it back on the breaker to be put through the screens and cleared.

Q. Yes, but what I mean to ask you is whether at the mines from which this coal is transported to breakers elsewhere situated there is any coal prepared for the market right at that spot? A. No, sir; oh, no, there is nothing there to prepare the coal with.

Q. Now, I want to ask you whether or not you know 1691
what contracts, if any, are in force between the Lehigh Valley Coal Company, or the Lehigh Valley Coal Sales Company and coal dealers as to the sale of coal from these particular mines? A. I don't know a thing about that. I had nothing, nothing to do with the coal company.

Q. You don't know whether or not there are in force any contracts on the part of the coal company or the coal sales company to sell to a dealer in New York, we will say, or Buffalo, any portion of the coal from these mines? A. Well, all I know is what I testified to, and 1692
that was the movement by the railroad from the collieries to which we shipped this coal.

Q. Which mines are these at which this service is performed? A. It is a number of mines and I cannot state them to you, but there is a regular tariff covering all of those shipments, regularly filed tariffs, and there will be no difficulty in the Government or anybody finding it.

1693 By Mr. Wheaton:

Q. Let me ask you this, Mr. Morrison: take that book as an illustration of a body of contiguous coal lands, you would consider the operation by which the coal is removed from that body of land to a single mine, wouldn't you—that is the mine? A. I don't know as to that. I know that our rates apply from each point and I don't know positively just exactly as to the mine.

Q. Now, let me ask you this: you have spoken in response to a question of Government's counsel to the
1694 effect that where coal was brought to the surface at a shaft or slope and then transported in the nature of this switching operation to a breaker for preparation that that meant the taking of all the coal from that mine. Now, what I am trying to get at is this; suppose there is a breaker over here on this piece of property indicated by that book (indicating) and that same mine over here on some property half a mile or three-quarters of a mile or two miles it may be; there is a second opening in the form of a slope or a shaft, and there is also a shaft at the breaker; now, what comes up at this slope
1695 or this shaft over here, three-quarters of a mile, or a mile or two miles from the breaker is only a part of the coal that comes from that mine, isn't it; it is not all coal that comes from that mine, is it? A. I should say not under this description but I am not familiar enough with that situation to discuss it.

By Mr. Warren:

Q. Did you ever hear of a ton of anthracite coal ever being contracted for to be sold in Buffalo or anywhere
1696 else on the face of this broad earth as it came out of the mine or slope before it was prepared for the market and the refuse taken out of it? A. Never.

By Mr. Gordon:

Q. Mr. Morrison, you spoke of extending credit to a great many other shippers over the line; you testified earlier, did you not, that all coal shippers except the Lehigh Valley Coal Company were accustomed to pay on sight draft at the end of the week succeeding their shipments? A. Except a certain few.

Q. Except a certain few like Pardee and—— A. Pardee Brothers & Company, A. Pardee & Company and G. B. Markle & Company. 1697

Q. Those are the only three coal shippers? A. Those are the only three coal shippers that remit. The others we draw drafts on.

Q. Now, laying aside for the moment the particular manner in which that payment is required, they are required to pay promptly whether they remit or whether they pay on draft—they are required to pay promptly? A. If they didn't I would go after them the same as I did after the Lehigh Valley Coal Sales Company. 1698

Q. And they have always been required to remit promptly so far as you know? A. Yes; sometimes they are three or four weeks and if they are I go after them.

Q. Then the only coal shipper who has been permitted to delay payment for sixty or ninety days after the freight accrues was the Lehigh Valley Coal Company and for a short period at least the Lehigh Valley Coal Sales Company?

Mr. Boles: I object to that question because the witness has never said that they were permitted to delay their payments. 1699

A. I have insisted from the start, you know that we have tried to collect the money. Now, if the man hasn't got the money or won't pay the money why then it comes up to a legal question, and if you get the thing in a lawyer's hands you never get it.

Q. Have you ever sued the Lehigh Valley Coal Company for freight rates? A. We never have.

Q. Have you ever refused to transport their coal, or required them to pay in advance because of their dilatory payments? A. We never have sued anybody that has shown a willingness to pay. 1700

By Mr. Boles:

You would not recommend any shipper to be sued who simply failed to send you a draft within ninety days? A. Never.

1701 By Mr. Gordon:

Q. Have you had other shippers who have consistently, year after year, failed to pay their bills in sixty or ninety days? A. I don't remember.

Q. Haven't you taken steps to enforce their payment, whether legally or otherwise, haven't you taken effective steps to require other shippers to pay their bills promptly? A. Only by correspondence and calling on them.

Q. But that has been effective? A. At times it has not been effective, no, sir.

1702 By Mr. Machen:

Q. If it is not effective then you take other steps? A. I just do the best I can.

Mr. Machen: We offer in evidence the testimony of Mr. E. B. Thomas, one of the defendants in this case, given under oath as a witness on behalf of the Lehigh Valley Railroad Company and other defendants in the case of the *United States of America v. Reading Company* and others, being the case reported in 226 U. S. 346, which testi-

1703 mony was given on June 30th, 1909.

E. B. Thomas, having been duly sworn, was examined as follows:

"By Mr. Platt:

"Q. Where do you reside? A. My legal residence is at Fountain Hill, Lehigh County, Pennsylvania.

"Q. You are the president of the Lehigh Valley Rail-

1704 road Company? A. I am.

"Q. And of the Lehigh Valley Coal Company? A. Yes, sir.

"Q. How long have you held those positions? A. Since December, 1902.

"Q. Before that time did you have any connection with the Lehigh Valley Railroad Company? A. I was chairman of the Board of both the Lehigh Valley and the Erie for a few months prior to that time.

"Q. Prior to that time what was your connection with 1705
the Erie Railroad Company? A. It was in various capacities. I went there in 1888, as Vice-President in charge of the lines west of Buffalo; subsequently came to New York in charge of all the lines; afterwards First Vice-President, afterwards Receiver, and finally as President.

"Q. That is you came originally with the old New York, Lake Erie and Western Railroad? A. Yes, sir.

"Q. When it went into the hands of a Receiver, you were the Receiver of the road? A. Not until John King and J. C. McCullough were appointed Receivers, and, on 1706
the resignation of Mr. King I took his place. He was in ill health.

"Q. What was the date when that road went into the hands of a Receiver? A. I cannot state that offhand. It is a matter of record and I assumed it was here and would not be of importance.

"Q. Can you state the year? A. No, I think we were reorganized in 1895, if I recollect right.

"By Judge Moot:

"Q. The date when the new company started in was about the 14th of November, 1895? A. Yes; that is my 1707
recollection; so the receivership must have been prior to that.

"By Mr. Platt:

"Q. That is the present Erie Railroad? A. The present Erie Railroad.

"Q. You remained President of that from its organization down to what date? A. 1901.

"Q. What date in 1901? A. I do not recall the exact date; I think it was May.

1708

"Q. The petition or complaint in this case charges that in 1895, or about that time, the defendants, or some of them, "Entered into an agreement, scheme, combination, or conspiracy, by virtue whereof they acquired the power to control, regulate, restrain, and monopolize, and have controlled, regulated, restrained, and monopolized, not only the production of anthracite coal, but its transportation from the mines in Pennsylvania to market points in other States, and its device and sale through-

1709 out the several states with the result that competition in the transportation and sale of anthracite coal has been wholly suppressed and the price thereof to consumers greatly enhanced." Is that charge true or false? A. It is not true.

"Q. Did you ever have any knowledge of any such scheme as that which is charged? A. I never did.

"Q. Has there ever been any such agreement, or scheme, or combination, or conspiracy between the defendants? A. Never has. I have never known the time
1710 when every party in the trade was not at liberty to produce and transport all the coal he desired to, or that he could sell. If he could not sell it, he could throw it in the North River, if he wanted to.

"Q. Did that agreement, or any such agreement as that or any agreement of that character, exist at the time of the commencement of this proceeding, June 12th, 1907? A. I never knew of any.

"Q. Has the Lehigh Valley Railroad Company or the Lehigh Valley Coal Company, within your knowledge, ever been a party to any such agreement? A. Not to
1711 my knowledge.

"Q. Or any officer of either of those companies? A. No, sir.

* * * * * *

"Q. Some testimony has been offered by the complainant about a meeting, or some meetings, which were held in or about 1896, of the Presidents of the anthracite railroads, at which there was an understanding, or an attempt at an understanding between them as to percentages of product of anthracite coal to be
1712 carried by different railroads during that year. Were you present at any such meeting at that time? A. Yes. I was present at a meeting where there was an attempt made to reach a tentative understanding as to the quantity of coal, proportion of coal, that each road would transport. It related entirely to transportation.

"Q. For how long a period was that under discussion? I mean, what was to be the period— A. The period was to be a year. There was not enough percentage in a hundred to go around, to begin with.

"Q. What do you mean by that? A. I mean to divide 1713
it into per cents., we had to put one hundred and one per cents., as near as we could come.

"Q. In other words, there was some party or parties that were there that would not consent to the percentage that was talked about; is that right? A. That is right.

"Q. And never did consent? A. Never did consent to it. As far as I have any knowledge, I do not think anybody ever regarded it. It came about by reason of crowded terminals, the question of distribution of cars 1714
among shippers.

"Q. I wish you would explain that more fully. A. The individual operators claimed that, in times of scarcity of cars, we were favoring our own companies, or those controlled by the railroads, and that they were short of cars. There was an attempt to distribute the tonnage to be handled on colliery production. The individual shippers would load up the cars and send them to tidewater or to any other destination and allow them to accumulate and have no market for them. They 1715
crowded our terminals and then when times came up that our own companies had not done the same, they claimed their same proportion of cars right along; and it was an endeavor to conduct the distribution of cars and movement of tonnage in a more orderly and in a more business like manner than it had previously been.

"Q. And to meet these complaints? A. To meet these complaints.

"Q. And to enable the railroad companies to meet these complaints? A. Precisely.

"Q. Was any demand made at that time, or was any 1716
suggestion of any demand made, to curtail the output of coal? A. None whatever. I recollect George B. Roberts, who represented the Pennsylvania at that meeting, stating distinctly that he would not discuss any question of that kind or have anything to do with it; with which I heartily accorded.

"Q. Was there at that time any charge made per diem for the holding of cars that were filled with coal for individual operators? A. No; nor for anybody else.

1717 "Q. Is there now? A. There is not now. I say there is not now; I think not. I am quite sure there is not.

"Q. There is none in effect at the present time, is there? A. My recollection is there is not. I know there was none at that time.

"Q. That, however, I think is immaterial, because what I want to get at is, what was the effect of that as to the holding up of the cars in dull times in periods when the markets for anthracite coal were dull? A. I think pos-
1718 sibly for a little while the individual operators were a little more conservative about loading up and sending to tidewater coal they had not sold.

"Q. What I mean to ask you is, what was the result that grew out of dull times in the market, which led to this conversation which you presidents had at that time? A. The result was this meeting to which I referred; but nothing practical came of that.

"Q. Was there a result in operation which tied up the cars? A. That was the result in operation; that is what brought it about.

"Q. Will you explain a little more fully how it re-
1719 sulted, as an operating matter, in tying up the cars? A. It blocked up the yards, blocked up the side tracks, made difficulty in switching and expensive methods of conducting the business.

"Q. Was the Reading Railroad at that time in the hands of receivers? A. They were.

"Q. Mr. Harris was one of the Receivers? A. Mr. Harris and Mr. J. Lowber Welsh were Receivers.

"Q. The precentages which were considered at that time were the precentages which have sometimes been
1720 referred to in this testimony as the 'Presidents' Percentage?' A. I assume that they were.

"Q. Did that understanding or talk ever go into effect as an agreement? A. Never.

"Q. Was it ever put into operation? A. I think some people tried to live up to it a little while, until they found the other fellow was not.

"Q. Was there ever any talk about continuing it after the first year? A. Never.

"Q. By anybody? A. There never was any meeting held after the first one, and I do not think there were any practical results out of that. 1721

"Q. Has there at any time since, except as to this early attempt by some of them, been any observation by the companies of these percentages which were adopted at that time? A. Not to my knowledge.

"Q. Has the Lehigh Valley Company ever observed them? A. It has not.

"Q. On what basis were those percentages ascertained? A. They were supposed to be in proportion to the quantities of coal that each road had theretofore transported. 1722

"Q. Had been transporting prior to that time, within a reasonable period? A. Yes, sir.

"Q. And practically representing mine capacity along those roads? A. Supposed to.

"Q. Under ordinary conditions of production and consumption at that time, would those percentages vary very much from those that were adopted? A. They might vary as properties were acquired or disposed of by other interests. I do not think they materially varied. 1723

"Q. I call your attention at this point to Government Exhibit No. 14, in which it appears, on page 49 of the printed Exhibits, that the total shipments of anthracite coal for the calendar year 1903 for the several railroads were 59,362,831 tons, of which the Lehigh Valley shipments amounted to 9,737,160 tons. It appears also that the supposed allotment by the Presidents' Percentages, so called, to the Lehigh Valley was fifteen and sixty-five one-hundredths per cent., and that percentage of the total shipments would have amounted to 9,290,283 tons; in other words, the shipments by the Lehigh Valley at that time were 447,132 tons more than they would have been according to the Presidents' Percentages for that year. At an average rate of, say, one dollar and fifty cents per ton, this would amount to something like $700,000 that the Lehigh Valley Railroad got in freights that year over and above what it would have received if it had been restricted by these Presidents' Percentages. Did 1724

1725 you ever hear of any other railroad company complaining? A. I never heard any complaint, and, if I had, I would have paid no more attention to it than I would to the direction of the wind. In 1903 there was an active demand for coal and the Lehigh Valley Coal Company could sell every pound of coal it produced, and it did so.

"Q. There has been offered in evidence some Exhibits, prepared by Mr. Ruley, which show, for example, that the tonnage of the Lehigh Valley Railroad Company for the period mentioned in that Exhibit was 1,393,663 tons
1726 less than it would have had if those percentage agreements had been observed, and which show that some years the Lehigh Valley's excess or deficiency ran into many hundreds of thousands of tons. Did you ever make any complaint, or hear of any complaint being made by any other of the supposed parties to this agreement growing out of that? A. I never did and I would not know who to complain to or what complaint I had to make. I know that during those periods, we mined and transported to market all the coal we could find a profitable market for."

1727 • • • • •

"Q. It appears already in evidence by the Government that the Lehigh Valley Coal Company, whose stock is owned by the Lehigh Valley Railroad Company, is the owner of large amounts of coal lands from which coal is produced, adjacent to and tributary to the Lehigh Valley Railroad Company. Can you state generally how it came about that the Lehigh Valley Coal Company acquired these lands? Was it in combination or by arrangement with another railroad company, or was it in
1728 competition with the other railroads? A. As I read the history of the Lehigh Valley Railroad, and as I know it on the other roads, their sole object in acquiring coal lands was to protect the tonnage and to secure tonnage to their own lines.

"Q. And to prevent it from going to other railroads? A. And to prevent it from going to their competitors. The competition between these anthracite roads has at times been very severe for tonnage; that is, for the acquirement of tonnage and for the acquirement of coal

lands which would secure to their lines the business, and as much tonnage as they could control. 1729

"Q. The carriage of anthracite coal is the principal business of the Lehigh Valley Railroad, is it not? A. It is about fifty per cent. of its volume of business; from forty to fifty per cent. It has been as low as forty and been over fifty. It is about fifty per cent. to-day.

"Q. You refer now to coal carried? A. I refer now to coal transported.

"Q. Is it not true also that a great deal of the remaining half of the company's business is incidental to and due to the coal business along the line, dependent upon it? A. The Lehigh Valley is a trunk line and carries a considerable portion of the east and westbound traffic between the Hudson River and the Lakes; but the bulk of its business is the anthracite coal. It has no bituminous coal of any particular amount and, outside of its anthracite coal, its traffic is made up of such things as pig iron, ore, and such matters in the Lehigh Valley, and grain from the Lakes, and general traffic. A great deal of that, of course, is consumed in the anthracite coal region. 1730 1731

Q. "Leaving out the other traffic, in grain and packing products, is it not true that a large part of the other traffic, local traffic on that line and passenger traffic, except anthracite coal, is due to and dependent upon the anthracite traffic along the line? A. If anthracite coal was not there, was not mined and transported, it would be a howling wilderness along the line of the Lehigh Valley Railroad.

"Q. Take, for instance, the purchase of the Coxe Brothers property in 1905 by the Lehigh Valley Company, which has been in evidence in this case. Was that due to any arrangement that was made with any other railroad, or was it due to competition between the railroads for coal properties for the maintenance of their tonnage? A. It was due to my efforts to secure, and to retain, to the Lehigh Valley Railroad the tonnage which belonged to it. Originally that tonnage was carried by the Reading Railroad. It was taken away by the Lehigh Valley, by the building of the connection. 1732

1733 "Q. That was about 1892? A. I do not recollect. It was prior to my connection with the road. It was transported by them for a great many years. Then there was a proceeding before the Interstate Commerce Commission, brought by Coxe Brothers, for the purpose of reducing the rates, on which the Commission made a ruling in which they lowered the rates, with which the courts did not agree. Mr. Alexander Coxe was a member of the Board of the Lehigh Valley Railroad. He came to me some months prior to the purchase and said
1734 that he thought of getting out of the business; that he had had unexpectedly a large offer for that property but that, in view of his connection with the road and his association with its owners, he would prefer to have them acquire it. He declined to name the men who had made him the offer. Subsequent interviews between us convinced me it was a bona fide offer. Mr. Coxe was a gentleman, a man of wealth and reputation and I had confidence in what he said. He made me the first offer. I went to our bankers and I asked them if I could have a
1735 cetain amount of money without disclosing the purpose. They told me I could. The result was that I negotiated the transaction, notified our people of what I had done and asked authority to go on and close the transaction, which I did. So far from disclosing it to anybody outside of our own finance committee, I took every pains to keep it quiet, for fear I would lose it.

"Q. And lose the tonnage? A. And lose the tonnage. The Pennsylvania Road was carrying then the greater part of that tonnage West. They made a demand for part of it, thought they ought to have it. They thought
1736 it was not a fair deal for us to go in and buy the properties they were carrying the coal of. I said that tonnage was on our line and I proposed to have it, and I maintained that position. I would have preferred not to have bought that property. I would have preferred to let Mr. Coxe remain there and run it; but I was not going to expose myself to the possibility of losing a large tonnage.

"Q. Take another illustration, the case of the purchase of the Pennsylvania Coal Company by the Erie Rail-

road. Was that to preserve the tonnage of the Pennsyl- 1737
vania Coal Company to the Erie? A. The purchase of the Pennsylvania Coal Company was made on my initiative. That company had done business in connection with the Erie Road—this was during my administration of the Erie Road—for over forty years. It leased to the Erie Road a branch line between Hawley and Lackawaxen, which the Erie used to transport the coal first when it was brought to Hawley by plane and afterwards, when the Pennsylvania Coal Company built the Erie and Wyoming Valley to that point, to connect with them 1738
and distribute their tonnage. The Pennsylvania Coal Company always wanted a larger division of the rate than I was willing to allow them. Like all sellers, they did not think they got enough. I thought they got too much. I knew it was a valuable piece of property. I knew the loss of that property to the Erie Railroad meant ruin.

"Q. You mean the loss of the tonnage? A. The loss of the tonnage. They bought the roadbed of the old Delaware and Hudson Canal, which had been abandoned. 1739
They had formed a new company, proposed to extend their Erie and Wyoming Road, in which the Erie owned forty-nine per cent., to the Hudson River. I opposed the building of that road by all the means I could command before the Railroad Commissioners, but they got their certificate. I followed it to the courts and was defeated. I did not expect to prevent the building of another road. I cared nothing about whether they built one road or a hundred, if I had the tonnage. I wanted time for negotiation and, after a very long time, nearly two years, I succeeded in inducing J. P. Morgan & Co., 1740
the voting trustee, to purchase that property for the account of the Erie Railroad. They did so, and that is the one thing that made the Erie property a solvent property, and it is their salvation to-day. Without it they would have been in bad shape, and I look back at no act in my fifteen years' experience on that road with which I am better satisfied and in which I feel that I did better work for them, than in that purchase. It has been a remunerative commercial enterprise. I took

especial pains to disclose to no other man in the anthracite region what I was doing, nor in the anthracite business, for fear that they would want to get in on that; but one gentleman in the trade, finding that I had it practically in my hands, came and demanded an interest in it and I denied it to him, either interest in the purchase or the tonnage. I was working to protect and to hold to the road the tonnage that they had always enjoyed. So far from there being any combination in that, there never was the slightest thought of it.

"Q. Let me just ask you this at this point. It is charged in the complaint that, "as a step in the development of the alleged illegal combinations between these defendants and in furtherance of the purpose of that combination, the defendants or some of them engaged in and became parties to the following acts"; one of those acts that is referred to is this purchase of the Pennsylvania Coal Company stock by or on behalf of the Erie Company. What truth is there in that allegation? A. There is absolutely nothing whatever. So far as I could, I kept the knowledge of that from everybody for fear I would lose it to the Erie Road.

"Q. Let me ask you whether the Lehigh Valley Railroad Company or any of its officers, had anything to do with that? A. They had nothing to do with it, and I doubt if it is possible they could have had any knowledge of it. I did all I could to keep it from everybody. There was no combination, there was no consolidation, there was no agreement; it was as clean, straightforward a transaction as ever took place in the transportation business of this or any other country, and out of which I made not a single penny.

"Q. Mr. Alfred Walter was President of the Lehigh Valley Railroad Company at that time? A. Yes.

"Q. Did you say anything to him about it? A. You bet I didn't.

"Q. Or to any other officer of the Lehigh Valley Company? A. Or any other railroad whatever. I think if they had asked me about it, I should have denied it as near as I could without absolutely lying to them.

"Q. It appears in the testimony here that the Lehigh 1745
Company has acquired, during the past years since its organization in the 50's, this coal property; or, rather, that the Lehigh Valley Coal Company has acquired it and other coal companies in which the Lehigh Valley Railroad Company has been interested. It appears particularly that, during recent years, since you became the President of the Lehigh Valley, that coal properties have been acquired in the Wyoming Region particularly and properties in the Lehigh Region. Have those all been acquired for the same purpose, that is, for protect- 1746
ing the tonnage and keeping it from going away to other roads? A. Making assurance doubly sure that the tonnage stayed on the Lehigh Valley where it belongs.

"Q. The Lehigh Valley Coal Company is also the lessor, it appears here, to various producers of coal along the Lehigh Valley Railroad. What has been the policy of the Lehigh Valley Railroad in that respect, in the way of developing its property and of producing tonnage? A. Originally the Lehigh Valley started off with the idea that the Lehigh Valley Coal Company would not de- 1747
velop properties. This, as I read the history; it is not my actual knowledge. It is as I read it from the reports.

"Mr. McReynolds: We object to it unless you testify from your own knowledge.

The Witness: I cannot testify of my own knowledge.

"By Mr. Platt.

"Q. These matters you are going to refer to are matters of general, common knowledge in the business, 1748
which it is your business to know? A. They are; but they are not of my actual knowledge. I was not there in 1850, thank Heaven; I have had trouble enough since.

"Q. But you do know of them as matters in the business of the company, which it is your business to know? A. Yes, sir.

"Q. Please go on and state what you were going to state about the history? A. The Lehigh Valley acquired lands in the name of its coal companies, or rather the Lehigh Valley Coal Company acquired them, for the pur-

1749 pose of protecting and developing to that road its tonnage. It leased a great many of those to individual operators. A great many of the individual operators in early days failed by reason of want of capacity, by reason of low prices of coal, and for various commercial reasons and unsuccessful merchandizing. Much of that mining was unskillfully done, and they left the properties in bad shape. They were taken over at different times, some of those for those reasons. They were taken over because the Lehigh Valley road wanted a larger ton-
1750 nage from them and those parties had not sufficient capital to properly develop them. Mining in the early days, when they went in and gouged out the profitable part and left the unprofitable part, was not a satisfactory method to the Lehigh Valley, which was endeavoring to preserve to itself its tonnage for a long period of time to come. It is not a new industry. It is an old one, and has been through more vicissitudes, more times of disappointment, and more money has been lost, than the public have any idea of.

"Q. What was the reason that the Lehigh Valley Coal
1751 Company made these leases, instead of going ahead and doing the mining itself, or keeping it until it could be mined? A. I do not think in those days they cared to go into the mining business, did not care to invest the capital, possibly might not have had the money. I am speaking now, understand, of matters not of my own personal knowledge.

"Q. There are quite a good many of these leases now that are producing, are there not? A. Yes, there are several.

1752 "Q. In these leases is there a provision in each of them requiring a minimum production? A. Minimum production, or, failing to produce that, to pay the amount which that tonnage would have produced.

"Q. In other words, there is a penalty on the lessee, practically, unless he does produce the mimimum amount? A. There is, yes. One of the Temple Companies, had, I think, somewhere between seventy thousand and a hundred thousand dollars which they had advanced on royalties on properties that they leased

from the Lehigh Valley Coal Company; originally leased 1753
to individuals and then transferred to the Temple Iron Company.

"Q. I do not mean to refer to these minimum royalties as a penalty technically, but it amounts to a penalization of them if they do not produce? A. The ordinary methods pursued in leases is that a party contracts to mine and pay at a specific rate per ton for a specific amount of coal, say one hundred thousand tons. If he produces, say, fifty thousand tons, he pays on the one hundred thousand tons; but he is allowed to recoup him- 1754
self out of future mining in excess of one hundred thousand, the minimum.

"Q. The idea being to— A. The idea being to produce a volume of business which would give transportation.

"Q. Is there any restriction in any of these leases as to the amount that each individual operator shall produce? A. None whatever.

"Q. The charge if made in the bill of complaint that, as one of the steps in furtherance of this alleged com- 1755
bination, the defendants, or some of them, entered into the transaction which is referred to as the Temple Iron transaction. I think it is not necessary to specify it any more carefully. It is the transaction referred to in paragraph VII, subdivision D, of the complaint. Is it true that the transactions which were entered into and which have been proved in this case in connection with the Temple Iron Company, were in pursuance of any combination of the kind alleged in the complaint? A. To restrict production?

"Q. Yes. A. Not at all. 1756

"Q. Or to control production, or rates, or prices? A. The Temple Iron Company had no more to do with the rates on coal than the proprietor of this tavern. Simpson and Watkins, who were shippers on the line of the Erie and Lehigh Valley roads, as well as the Ontario and Western——

"Q. The Lackawanna also? A. Yes, they were shippers on the Lackawanna. They were, as usual, dissatisfied with the rates, thought they should have lower ones.

1757 We declined to lower the rates; they were reasonable. They got a lot of tonnage together, their own and that of other shippers, and threatened to build another road to the Delaware River opposite Easton.

"Q. That is the Erie and Wyoming Valley? A. I do not recall the name. I assume that is it. I think it was the New York and Wyoming.

"By Mr. Todd:

"Q. New York, Wyoming and Western? A. Yes; and
1758 they bought a lot of rail and so on. A great many people thought they would not build that road. I was not so sure what a lot of speculators back of that tonnage would do. I did not care whether they built a road or not, but I did care if the tonnage which the Erie Railroad was then carrying was taken away from us. This, you must bear in mind, was prior to the purchase of the Pennsylvania Coal Company, and not subsequent to it. They came to me and talked it over, and they talked it over with financial people in New York.

"Q, You mean Simpson and Watkins? A. I had no
1759 particular conversation with Simpson & Watkins, but they talked to financial people here and the matter was brought to my attention. I did not care how many railroads they built, if I could hold that tonnage to the Erie Railroad. They made a proposition to people here in New York to sell it. I was very anxious that we should buy it and preserve the tonnage that we were carrying and at the same time preserve the tonnage to other and friendly lines. I believed it was a good commercial transaction. If the Erie Railroad had had the money or
1760 credit to have purchased that alone I would not have wanted any partners in it. I would have taken the whole of it. I would have taken over the Lehigh Valley's if I could have obtained the tonnage she is now carrying under it. I was not on her payroll then. It was in pursuance of those ideas that the properties were purchased. It is only fair to say, in further explanation of that, that the purchase of those properties has been a profitable one. We did not expect a six months' strike immediately following the purchase. We did not expect

the strike of 1900, when the collieries lost more money 1761
and we were forced to make it good. It has been commercially successful and has repaid every dollar of our advances.

"Q. You understood at that time that the Simpson & Watkins properties and those that were associated with them were seeking a market? A. I did.

"Q. And that the tonnage that was then tributary to the Erie Railroad might get away from it to some other railroad? A. There was every prospect that it would.

"Q. To either an existing railroad or some new rail- 1762
road? A. Yes.

"Q. And it was the possibility of the loss of that tonnage that induced you to go in, as an officer of the Erie Railroad, to the Temple Iron Company transaction? A. It was.

"Q. And to protect the Erie Company? A. Yes, sir.

"Q. As to the Lehigh Valley, what were the motives that caused the Lehigh Valley to go into it? A. I do not know what their motives were, but I assume they were the same as mine. Part of the mines were on their lines and I assume that they wanted to retain the ton- 1763
nage they had. Somebody would have bought those properties, and it was better to buy them jointly and allow the tonnage to go to the roads that had formerly carried it, than otherwise.

"Q. Was the result of that operation to continue the tonnage of the collieries on the roads, where that tonnage had been before? A. That was its practical result, and it has never been disturbed.

"Q. Is there not one minor exception as to a part of the tonnage of one of the mines? A. Simpson & Wat- 1764
kins, prior to the purchase of those properties, had made a contract to allow the Ontario and Western a certain amount of tonnage from the Northwest colliery. They claimed that contract was ultra vires, and need not be regarded when they leased the properties to us. We stopped allowing the Ontario and Western to take that tonnage, and the Erie took it all. Mr. Fowler brought an injunction against us and, in connection with Mr. Baer, I looked into the matter and we came to the con-

1765 clusion that, whether it was a legal contract or not, it was an unfair thing to take away that tonnage, it was a violation of a contract, whether legal or otherwise, and it was settled by allowing that tonnage to go, as it has ever since, to the Ontario and Western.

* * * * *

"Q. Now, as to the sixty-five per cent. contracts, it is alleged that they were made in pursuance of this alleged combination and in furtherance of this alleged scheme. Is that true? A. It is not. There was no scheme or ar-
1766 rangement that ever I heard of of that kind. Originally contracts for the transportation of anthracite coal were made as low as forty per cent. of the selling price at tidewater, by first one road then another; I think the Lackawanna must have probably been the first one that made that. That is my impression. They were followed up until the operators had gradually crowded them up to sixty per cent. of the selling price at tidewater as their proportion. Mr. Mitchell, in pursuance of his schemes for getting more for his laboring men, came down to
1767 that country in 1900 and called a strike.

"Q. First put on the record who Mitchell is? A. He was President of the United Mine Workers. Unfortunately, just at that time there was a Presidential election on. We declined to advance the price of labor. The anthracite business has the same attraction for a politician that a candle has for a moth. I do not know why, but it has. We were pressed from every side. Mr. Hanna came to Mr. Morgan and begged him to use his influence to have us accede to their demands, that the election of a Republican President was threatened
1768 but our standing out and fighting the labor unions. From every side pressure was brought to bear upon us and we were forced to make a ten per cent. advance, and it was the interjection of the politicians into a business which they neither understood nor could conduct, which forced the settlement of that strike and the unnecessary and ill-advised advance.

"Q. That resulted in a ten per cent. advance in the cost of labor? A. It did, and upon that the individual operators demanded an increase in their percentage.

Various meetings were held between the coal companies 1769
purchasing their coal and themselves, in which it was finally agreed that these sixty-five per cent. contracts should be made, and made for the life of the property.

"Q. And with provisions as to inspection? A. The contracts are in evidence. They were not all made, unfortunately, for the life of the mines. The Pennsylvania Railroad only made theirs five years. Coxe Brothers only made some for seven years. We have one expiring to-morrow that was only made for seven 1770
years; and the chairman of that Operators' Committee, who was bound in every manner and by good faith to make a contract, has never made one to this day. There are many people outside. There has never been any effort to force people to make a sixty-five per cent. contract. If I were an individual operator, I would make one, because I think I could make more money. Others stay outside and market their own coal and are treated precisely the same as those who have made the contracts. It was simply a commercial transaction.

"Q. At those meetings, and as the result of those 1771
meetings, did you do anything more than agree upon a uniform form of contract which the parties could make as between themselves if they wished to make it? A. There was nothing done except as appears in the sixty-five per cent. contracts themselves.

"Q. I understand; but was any operator bound in any particular instance with reference to any particular colliery, by those meetings, to make the contract, after the contract was adopted, or did you merely agree upon a form hich you afterwards entered into with such of 1772
the operators as saw fit? A. The meetings held in respect to that were simply as to the form of the contract.

"Q. Then subsequently those operators who wished to enter into contracts of that character with the coal companies, did so?

A. They did.

"Q. And those who did not wish to do so did not do so; is that the fact? A. That is precisely the case.

1773 "Q. And is it a fact that the chairman of the Committee of Operators who conducted those negotiations refused to enter into the contract? A. That is a fact.

"Q. Who is that? A. That was Mr. Kemmerer.

"Q. And he operates at the present time— A. He operates at the present time without any contract and sells his own coal and does what he pleases with it. There are seventy-two collieries served by the Lehigh Valley Railroad, of which twenty-eight are operated by the Lehigh Valley Coal Company. There are eleven
1774 operated by individual operators under sixty-five per cent. contracts; there are thirty-three operated by other individual operators, making a total of seventy-two.

"Q. Kindly state what individual operators on the line of the Lehigh Valley Railroad mine from lands of the Lehigh Valley Coal Company? A. The Austin Coal Company; Kingston Coal Company; Lentz; the Mill Creek Coal Company; the Stevens Coal Company; and the Forty Fort Coal Company, are all operators on the line of the Lehigh Valley Coal Company. The Forty Fort Coal Company was leased to Simpson &
1775 Watkins and in that deal went to the Temple Iron Company. The Midvalley Coal Company is another operator on the line of the Lehigh Valley Railroad, who operate on the lands of the New York and Middle Coal Field Railroad and Coal Company, the control of the majority of the stock of which is held by the Lehigh Valley Railroad and is simply a company for leasing to operators.

"Q. Which of these that you have mentioned are under sixty-five per cent. contracts? A. Four; Austin, Lentz,
1776 Forty Fort and Midvalley.

"Q. Taking those you referred to a while ago as being originally on leases and which have been acquired by the Lehigh Valley Coal Company, state in regard to those in detail. A. There were five of those; Connell Coal Company; Seneca Coal Company; Righter Coal Company; Mineral Spring Coal Company, and a part of the Coxe Brothers, on what they call the Beaver Meadow lands.

"Q. The Government has introduced in evidence the 1777
agreement between G. B. Markle and the Lehigh Valley Railroad Company, dated December 30th, 1889, as Exhibit 151 [**Govt. Ex. 1**, in the present record], which appears at page 312 of the Government's printed exhibits. You are familiar with that contract, are you not? A. I know the contract.

"Q. That contract has been in force ever since it was made up to the present time? A. It is in force at the present time. As far as I know, there has never been any interruption to it. 1778

"Q. Are settlements between the parties under that contract made exactly in accordance with the terms of the contract? A. They are, absolutely.

"Q. Is there a secret reservation or other settlement of any character made between the parties other than that which appears on the face of the contract? A. Absolutely nothing. The Lehigh Valley Coal Company is a factor and sells G. B. Markle's coal on a stated commission under that contract, and there are no reclamation agreements in regard to the transportation or the sale of coal, or settlements, other than as they appear 1779
in that written document.

"Q. It is being carried out exactly as it was made and has been all the time you have been President of the Company? A. Absolutely. There is nothing mysterious about that contract.

"Q. You referred in the early stage of your testimony to the decision of the Interstate Comerce Commission in 1891, in the proceeding that was brought by Coxe Brothers & Co. against the Lehigh Valley Railroad Company to establish rates on coal from the an- 1780
thracite regions to Perth Amboy. I ask you to refer to that decision and state what were the rates that were decided upon by the Commission at that time? A. The only knowledge I have is what is embraced in this decision. This antedated my connection with the road.

"Q. I am handing you the decision; you can read it. A. "Which we have determined upon, as reasonable, per ton of 2,240 pounds, from the collieries of complainants to Perth Amboy is, on the prepared and larger sizes $1.50; on pea $1.25; on buckwheat and culm, $1.05."

1781 "Q. At the time of that decision the rates were somewhat higher than those, were they not? A. I have so understood.

"Q. As a matter of record, they were. Some time after that decision, the rates were established which are substantially like the rates found at that time, namely, as appears on the record, on prepared sizes to Perth Amboy one dollar and fifty-five cents; on pea one dollar and forty cents; on Buckwheat No. 1 one dollar and twenty cents, and on the smaller sizes one dollar and
1782 ten cents. Those rates have continued, have they not, for a number of years? A. As my understanding of the transaction is, the Lehigh Valley went into court and resisted that order of the Commission and were successful in that, and the higher rates obtained; but gradually the rates have been, for commercial reasons, competitive conditions, worked down until to-day they are as stated.

"Q. Is it not true that there has been, meanwhile, a very great increase in the cost of production and trans-
1783 portation of coal? A. There has.

"Q. Could you give an approximate estimate of the increase of cost of carrying the coal since that finding? A. It would be only a guess, and absolutely of no value.

"Q. Can you state a minimum? A. I have been trying to find out for forty years what it costs to haul a ton of freight a mile, and have failed. There has been an increase in the cost, especially in the last few years, in labor and material, in every business avocation.

"Q. Is that percentage on labor as high as twenty-five per cent., anyway? A. I should say that, on much rail-
1784 road labor, the advance has been even higher than that.

"Q. How as to material and supplies? A. The rail is considerably higher. We have bought rail as low as sixteen dollars and the least we have been able to buy it for the last few years is twenty-eight dollars. That is a very large percentage.

"Q. When you say that the cost of labor has increased as much as you have said, does that apply to labor for construction and maintenance, as well as labor for operation? A. Oh, yes.

"Q. Has equipment increased in cost? A. We are 1785
paying $1,000 for coal cars now that we used to buy for $250; to be sure, the latter only carried twenty tons and the present carry fifty.

"Q. Taking the cost of equipment to quantity of coal, has the cost of equipment increased? A. Oh, yes.

"Q. Very much? A. Yes.

"Q. Is there any agreement or understanding, or arrangement of any kind or character, by which the rates on coal have been fixed as between the defendant railroads? A. I know of none.

1786

"Q. Or any of them? A. I know of none.

"Q. Has there been any such agreement? A. I do not know of any.

"Q. Do you know of any agreement, or is there any agreement, which would in any way restrict the Lehigh Valley Railroad from either increasing or decreasing its rates at its own discretion at any time? A. I could increase the rates, but I doubt whether I could hold them there. I could decrease the rates at the expense of the treasury.

"Q. I am not asking you whether you could increase 1787
a rate above another company's as a commercial proposition, but is there any agreement that forbids you from doing that? A. None whatever.

"Q. Or any understanding or agreement with any other railroad? A. None whatever.

"Q. Is there any understanding, agreement, or restriction of any kind, as between the Lehigh Valley Railroad and other companies as to reducing rates? A. No, sir.

"Q. Tidewater rate or any other rate? A. No. 1788

"Q. What are the Pennsylvania Railroad Company's rates on coal to tidewater? A. I cannot speak as to that. I think their rate is one dollar and forty cents.

"Q. On prepared sizes? A. On prepared sizes. I am not certain about that and I would not like to testify about the rates of other companies.

"Q. Do you know what the Lackawanna rates are? A. I do not.

"Q. Do you understand it to be less than the Lehigh Valley Railroad rate? A. I do not know whether it is

1789 or not. There cannot be any very marked difference in the rates; otherwise, shippers would get after us. I would not like to testify as to other roads.

"Q. Is there any agreement or understanding between the coal companies as to the price of coal? A. I do not know of any.

"Q. Is there any agreement or understanding which would restrict the Lehigh Valley Coal Company from reducing the price on coal at any time? A. There is no agreement, but I should be very loath to do it.

1790 "Q. There is no necessity of doing it as long as you can get the price, is there? A. I am trying to get the price.

"Q. Have you entered into, or is there in existence, any kind of an agreement which would prevent you, if you thought it was a good business proposition, from reducing the price of coal? A. There is no agreement to that effect nor has there been. I could reduce the price of coal if I desired to. I have done it at times, when I had quantities of unsalable coal on hand; but to do it would only invite corresponding action on the part of
1791 my competitiors, and the result would be the same, except that each of us would have less money in the treasury. Ordinary commercial sense would prevent me from reducing the price of a commodity in which the amount of profit is already less than it ought to be.

"Q. In other words, there is nothing but economic conditions that control the price? A. We cannot afford to sell coal for less than it is now and make money out of it. I could go in and reduce the price to all points we reach, and I would bring about commercial conditions
1792 that would invite other companies to do the same. I would not increase my tonnage and I would have pulled down prices all over the country. I would have depleted my own treasury as well as that of others and I would have been anything but faithful to the interests of the properties that I am endeavoring to serve.

"Q. And any such reduction as that would result in a failure on the part of the Lehigh Valley Coal Company to meet its expense? A. A very marked reduction in the price of coal would not leave any margin of profit to the Lehigh Valley Coal Company.

"Q. Broadly speaking, either you or the Lehigh Val- 1793
ley Coal Company is free to market the product of coal that it has in any market, at any time, at any price that you and that company see fit; is that true? A. The Lehigh Valley Railroad Company has six thousand stockholders. I am President and, subject to the ordinary direction of the Board of Directors, I have absolute power in that matter. There is no combination whatever, nor has there been, that prevents me from managing that property in what I believe to be the best interests of its security holders, nor has there been in the 1794
past, nor will there be in the future while I am in charge of it.

"Q. No restriction of any kind whatsoever? A. None whatever. I manage it with due reference to the best interests of the security holders, with regard to commercial conditions, and as any prudent, conservative man would do; but I deprecate and avoid in every way undue and unreasonable competition, where no good result will come to any party whatever, not even the public.

"By Mr. Todd:

"Q. Is the Lehigh Valley Railroad embraced in that 1795
statement or the Coal Company? A. Both. I want to make the declaration as broad as I can put it in the English language.

* * * * *

"Q. You testified that, in 1895, or thereabouts, there was some sort of an arrangement or an attempt at an agreement amongst the parties in control of the various coal carrying railroads, looking to a percentage arrangement? A. On transportation; 1896, that was.

"Q. Where were the meetings held that affected that 1796
matter? A. That was held at the Trunk Line Association; that is my recollection.

"Q. Where is that, please? A. Liberty Street.

"Q. In New York City? A. Yes.

"Q. Who were present at those meetings? A. I cannot recall, in 1896. Mr. Roberts, who was then President of the Pennsylvania Road, was there. I think Mr. Maxwell represented the Jersey Central; Mr. Sloan, who is now dead, the Lackawanna; and Messrs. Welsh and Har-

1797 ris the Reading. I do not recall who represented the other companies.

"Q. What were you attempting in those meetings to arrive at? A. What I have stated, a distribution of the cars and the transportation on colliery production, for the purpose of relieving our collieries and removing any cause of complaint on the part of individual operators, who would ship their coal down and block our terminals and our roads.

"Q. How were those percentages to be ascertained
1798 and how was each road to know what it was to do from month to month? A. It could not, and it did not, because the whole arrangement was ineffective.

"Q. Did not each road get, at the end of each month, a statement of what every other road was doing? A. I assume they did.

"Q. Your road did? A. Yes.

"Q. And you made an effort to keep your tonnage substantially in harmony with your percentage? A. I tried to keep within reason there.

"Q. How did you manage that practically? There
1799 were a great many collieries along your road? A. Yes.

"Q. As a practical matter, how did you undertake to keep your transportation substantially in harmony with the percentage that had been suggested? A. We could not do that and we did not do it. I found it was not regarded and did not pay much attention to it myself.

"Q. I know, but you said, if I understood, that you made an effort to do it. How was that effort directed? A. The effort was directed to clearing up our terminals and not to distribute our cars so as to give a man
1800 who had a hundred cars standing down at tidewater which were not unloaded, his proportion which he would be entitled to under ordinary conditions.

"Q. In other words, you knew what the capacity of each colliery was along your road? A. We were supposed to; whether we did or not, I do not know. That was largely in the hands of the transportation department.

"Q. You took up the adjustment of the cars sent to each colliery, to divide out amongst these people your

total? A. No; our total exclusive of the capacity of the collieries to each other and assuming that John Jones had no coal standing down here which he had not marketed. If he had, we would have given his cars to somebody else. 1801

"Q. In other words, you endeavored to carry out this contract, so far as you did endeavor to carry it out, through means of the distribution of cars to the various collieries; is not that so? A. Yes, possibly.

"Q. Is it not so really? A. No, because it was a tentative agreement, tentative only. 1802

"Q. While you were with the Erie Railroad Company, and since you have been with the Lehigh Valley Railroad Company, have you received each month the statistics prepared by Mr. Ruley? A. I have.

"Q. Prior to the award of the Strike Commission, what was the purpose of those statistics? A. Prior to the award?

"Q. Yes. A. The anthracite industry is an old industry. It has settled into pretty well defined lines. It is a limited industry and, naturally, we were anxious to know what our competitors and what everybody was doing, 1803 and it was a matter of understanding between us that we should report our tonnage to one man, who would make up statistics, and it was commenced years before I ever came into the business and has obtained since.

"Q. So each month during the time that you were President of the Erie and since the time that you have been connected with the Lehigh Valley, you have obtained these Ruley statistics, which show you what your competitors are doing? A. I do not know how far back that goes. I cannot locate that. I think it obtained on 1804 the Erie, although there I did not pay very much attention to the coal traffic, because it was not as large as our merchandise traffic; but we have had general notice of what our competitors are doing.

"Q. That shows you what your competing railroads are shipping? A. Yes.

"Q. And also it shows what your competing companies are getting for their coal? A. Yes; the latter in order that we may settle with our individual contracts.

1805 "Q. You know then at the end of each month how much coal has been sold by the Lackawanna Railroad Company and what is its tidewater price for it? A. I know how much they have reported to Mr. Ruley as having sold and what they reported the price.

"Q. So, unless they have lied to Mr. Ruley, you know the facts? A. I assume they are facts.

"Q. And you report to Mr. Ruley each month what you have done? A. I do.

"Q. And you get from Mr. Ruley a compilation at the
1806 end of each month showing all of the things which have been reported by the several companies? A. Yes, sir.

"Q. As a result of these reports which you get from Mr. Ruley, you can tell if there has been any cutting of prices, can you not? A. No; with as large a tonnage as that, it is very difficult to locate any cutting of prices. I have known of the cutting of prices by my competitors which did not show in those reports.

"Q. It cannot be very material without showing in those reports, can it, or very long continued? A. Yes,
1807 it might possibly, and it might on some particular size, and yet not seriuosly affect the total average.

"Q. Do you remember the fact, years ago, that there was a very considerable complaint of the cutting of prices of coal in Brooklyn? A. I do not recollect. That might have come to the sales agent, but I never got as close to the trade as that.

* * * * *

"Q. In this Lower Region where you operate, are there any independent operators who ship their coals
1808 over the rails of the Lehigh Valley? A. There are, and they are running full time.

"Q. Where do they sell their coal? A. Markle & Company is running full time and we sell his coal for him.

"Q. Where? A. Tidewater, any place he instructs us to. His coal is of a superior quality and brings a higher price in the market, and is more cheaply mined than any coal in that or probably any other region, by reason of natural drainage; and there are others operators running as well, individual operators.

"Q. You think they are running full time? A. I know 1809
they are. They are probably selling their coal at a cut rate. I do not know. I cannot afford to.

"Q. Now right there; what proportion of the coal that moves over the rails of the Lehigh Valley Railroad Company is produced by some company which it controls, or it purchased by some such company, under sixty-five per cent. contracts? A. I will see if I can give you that. (Referring to Annual Report). The total production of anthracite coal from all lands owned and controlled by the Lehigh Valley Coal Company and other com- 1810
panies in which it and the Lehigh Valley Railroad Company are interested through ownership of stock, was 9,263,899 gross tons for the fiscal year ending June 30th, 1908.

"By Mr. Platt:

"Q. Some of that, however, was produced by lessees of the Lehigh Valley Coal Company? A. Oh, yes. I would very much prefer to furnish a statement on that which you have asked, in order to be absolutely accurate. 1811

"By Mr. McReynolds:

"Q. I do not care for it down to the last one thousand tons. If you can give it to me approximately, it may save us all bother. A. The Lehigh Valley Coal Company and affiliated companies mined and produced during the year eighy-five and sixty-nine one hundredths per cent. of the anthracite coal transported by the Lehigh Valley Railroad. That probably will answer your question.

"Q. That eighty-five per cent. refers to all the coal that moves in either direction over the lines of the Le- 1812
high Valley Road that is under its control; that is, the Lehigh Valley Coal Company, moving in whatever direction it goes? A. Yes.

"Q. What proportion would you say of the coals that are brought and sold at tidewater are under the control, either by reason of mines or by reason of purchase, of the Lehigh Valley Coal Company? A. I will give you the exact figures on that. Those figures have been recently made up and will be furnished to you, so that you can put them in the record.

1813 "Q. When you were the president of the Erie Railroad Company, what was your relationship to the Hillside Coal Company? A. The Erie Railroad Company owns the stock of the Hillside Coal Company.

"Q. Were you president of the Coal Company? A. I cannot recall whether I was or not. I do not think I was.

"Q. While you were president of the Erie Railroad Company, was it part of your duty as president to fix coal rates? A. No. They were to be fixed by the execu-
1814 tive officers, traffic managers.

"Q. And that matter did not come directly to you? A. It would not come directly to me, unless it was necessary to consult me in some way about extraordinary conditions. Ordinarly the traffic managers of the road fixed the rates.

"Q. Who fixes now over the Lehigh Valley Railroad the rates on coal? A. The traffic manager.

"Q. Is he at liberty to change them? A. He is at liberty to do it, but I doubt whether he would do so without consultation, because it is an important matter.

1815 "Q. Who fixes the selling prices at tide-water at which the coals of the Lehigh Valley Railroad are sold? A. They are fixed by the sales agent .

"Q. Is he at liberty to make any change in them without consultation with you? A. He has perfect authority to mange the Coal Company, but he would undoubtedly consult with me if it came to any marked variation from prices that I had established.

"Q. When did you last establish those prices? A. I do not recollect. There has not been any change par-
1816 ticularly in prices since the last time, when our friend John Mitchell and his esteemed political compatriots succeeeded in doing what we could not do, get up the price of coal.

"Q. After this interference, as you say, by Mitchell, how was the price of coal fixed? A. I do not know, when you come to that, how it was fixed. I presume likely that there was some consultation as to what we were going to do.

"Q. Between whom? A. The various parties in interest, I suppose.

"Q. Who were they? A. The various coal carrying companies or the various coal producers. I think there was consultation with individual operators as to what coal ought to be in consideration of the great advance in cost of producing. 1817

Q. There was a general consultation? A. No; there was not any general consultation.

"Q. Whom did you consult with about it? A. I do not recollect now. I think probably I consulted with Mr. Baer; very likely I asked Mr. Truesdale what he was going to do. I know I asked Mr. Walter what he was going to charge for coal. 1818

"Q. The result of this matter that you all came to the conclusion to sell at the same price? A. I do not know whether we did. I know they did practically sell it at the same price. The Reading is the largest producer and, with the qualities of our coal and all, I saw no reason why I should sell the coal lower than the others. I would like to get higher, and do on some grades.

"Q. Prior to this last advance on coal, were all the coal railroads selling at the same price? A. As a rule, I think they were. I think there were undoubtedly variations. As an effect of the conditions the strike brought about, coal was selling at from ten and twelve to fifteen dollars a ton by the individual operators during that strike while the large coal companies, what are called the railroad coal companies, held to a uniform price of five dollars. We believed that that was a remunerative price to us, a fair price, and that the public could pay it, and, notwithstanding that, individual operators were selling their coal at from ten to twelve dollars per ton, we held absolutely to our price of five dollars. It took a corporation without a soul to consider that they had any duties to the public to perform. 1819 1820

"Q. And since then you have been sticking to the same price? A. We have, and I will advance it, if commercial conditions will admit of it, which I doubt. The cost of anthracite coal in this country will never be what it was in the past. At one of our mines we are raising fourteen tons of water to every ton of coal we

1821 raise, and it costs as much to raise the water as it does the coal. The mines are getting deeper; the haulage underground is longer; material is advancing. We are hampered by the interference of unionism, as to the amount of work the men should perform. Our breakers, costing from $500,000 to $600,000, even at times when there is a full demand, can only run nine hours, under the Award. That is what the interference of politicians in business will accomplish.

* * * * *

1822 "Q. Coming to the Temple Iron Company, who orinated that plan? A. Simpson & Watkins, I think, originated the idea of wanting to sell their properties.

"Q. Who were Simpson & Watkins? A. Simpson & Watkins were individual operators there who controlled mines on the line of the Erie and on the line of the Lehigh and shipped over that and the Lackawanna, and also the Jersey Central, to some extent.

"Q. Those lines were all in competition for their business? A. They were.

1823 "Q. Who suggested the plan of having the Temple Iron Company buy out Simpson & Watkins? A. I do not know who suggested it. I did all I could to have the Simpson & Watkins property purchased, because I wanted to retain to the Erie Railroad the business that she had heretofore enjoyed from that property. I thought that bunch of tonnage might become mighty attractive to somebody to enter into that field, and some of my competitors might have bought that property and taken that tonnage away from me. If I had had money or credit, I would not have asked any help. I

1824 would have taken it alone.

Q. Who were your competitors you were afraid of? A. The Lehigh Valley might have taken it; the Lackawanna might have taken it; the Jersey Central could have reached it.

"Q. Where was the coal from the Simpson & Watkins collieries moving at that time? A. Moved over all of those roads.

"Q. Where? To what point? A. All over, wherever they could find a market for it.

"Q. Was it coming to tidewater? A. Some of it came 1825
to tidewater. Some of it went West, to different points.

"Q. Outside of the State of Pennsylvania? A. They marketed some in Pennsylvania. They marketed it as any merchant would wherever they could find a market.

Q. But I mean it went to various points outside of the State of Pennsylvania? A. Oh, yes.

"Q. Did it take any money to put through this Temple Iron Company deal? A. I think it did.

"Q. Who furnished it? A. A syndicate furnished it.

"Q. Who was the syndicate? A. I do not know. I 1826
think that is a matter of record here. I did not know until I read that who the syndicate was.

"Q. How did the Erie Railroad Company come in? What did it do? A. It endorsed the contract, to the effect that, in case of her inability to earn a certain amount of money, she would furnish it, furnish it to the extent of the per cent. that she had agreed to, that as nominated in the agreement.

"Q. In other words, the Erie Railroad Company guaranteed a certain percentage of the securities of the Temple Iron Company? A. No; because the Temple Iron 1827
Company might have failed to earn that.

"Q. How was the percentage which the Erie should guarantee determined? A. That was determined, as I recall it, by Mr. Baer, Mr. Stetson and somebody else. Just how they worked it out, I do not know. I did not ask.

"Q. You took what they gave? A. I took what they gave. I had confidence in the integrity and judgment of those gentlemen.

"Q. You swallowed the pill as it was handed to 1828
you? A. I did, and because of this; the Erie Railroad had just been reorganized, and there was not a banker in London and few in New York that believed she could live. I believed she could, but not if she lost tonnage, and I would take a chance on anything to hold my tonnage and I did it. If it afterwards got away from them, it was not my fault.

1829 "Q. So your purpose in going into the Temple Iron Company was to hold on to your tonnage? A. It was.

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"Q. You said the competition between these roads has at some times been very severe in reference to coal lands, as I understood you? A. Yes, sir.

"Q. Between what roads has that competition been particularly severe? A. I think all of them, in times past.

"Q. What was the occasion of that competition?
1830 What was the underlying motive for it? A. To secure absolutely to their own roads the tonnage for the future.

"Q. One road would think that, if another road bought the property, it would lose the tonnage? A. Yes, sir.

"Q. Therefore, it would go into the market for it? A. Yes, sir.

"Q. There was tonnage there which might be reached over one or two or three or four lines, and they were competing in order to control it; is that right? A. That is correct.

1831 • • • • •

"Q. What other railroads are large owners of stock in the Lehigh Valley Railroad Company? A. The Jersey Central has, I think, twenty thousand shares, the Reading has—I cannot recollect; I think it is in the testimony now. The Lackawanna has also an interest.

"Q. When were those interests acquired? A. I think they were acquired prior to my administration. Is not that a matter of record?

"Q. You do not know the occasion for it? A. As the President of the Erie Railroad I consented, or agreed,
1832 to the purchase of, I think, about a million dollars of that stock. I believed it to be a good investment. It was selling at a low price. I thought the road had great capacity, and I still think so. That my judgment is confirmed, is evidenced by the fact that the Lake Shore made over three million dollars from the purchase and sale of their interest in that Lehigh Valley stock.

"Q. While you were with the Erie Railroad Company, there was some sort of an arrangement for the purchase of a large amount of Lehigh Valley stock and dividing

it up among other railroads? A. I never knew of any such arrangement. What I did for the Erie, I did specifically for them in the purchase of the amount I referred to. 1833

"Q. The Erie purchased a million? A. Yes, sir.

"Q. And afterwards sold it? A. Yes, sir.

"Q. The Lake Shore purchased a large amount? A. Yes.

"Q. And afterwards sold it? A. Yes.

"Q. Who negotiated with you, as the President of the Erie Railroad, for the purchase of this Lehigh Valley stock? A. I think I took it up with Mr. Bacon, of J. P. Morgan & Co. as my recollection is at the moment. 1834

"Q. How did the Erie get the money to pay for it? A Borrowed it, as she always does, and afterwards paid for it, took it up.

"Q. Were all these stocks purchased at the same time? A. I do not understand that they were.

"Q. Do you know or not about that? A. I do not know absolutely, but I am quite certain that the purchases were not made at the same time. What was known as the Packer stock was in the market; that is the stock left by Asa Packer and held by the Lehigh College as an investment, and that was on the market and it was believed it was a good thing to take up that stock, that the thing could be worked out and made profitable. 1835

"Q. You say that it was supposed that it was a good thing to take up that stock. Who supposed it? A. I did, for one.

"Q. Who else? A. I do not know. I assume the other people that purchased it did, had corresponding views. The stock was purchased, I think considerably below forty dollars a share. 1836

"Q. Your negotiations were with Mr. Bacon, of Morgan & Co.? A. Yes, as I recall it now. I will not be certain of that.

"Q. Did you know at that time that the other railroads intended to purchase? A. I thought very likely they would.

"Q. Were you consulted when the present tidewater rates were fixed on anthracite coal? A. I do not think I was. I have no recollection of it.

1837 "Q. Do you know when they were fixed? A. I do not.

"Q. You cannot give us any information as to how they were fixed? A. No, I cannot. I presume they were the result of consultation among our freight traffic managers, as freight rates always are and always have been.

"Q. Do you know, as a matter of fact, that prior to 1901 the Lehigh Valley Railroad was accustomed to transport coal to tidewater upon a forty per cent. basis? A. I have understood so.

"Q. When did it cease to do that? A. I do not know.

1838 You mean forty per cent. of the selling price at tidewater?

"Q. For its freight. A. Yes, I have understood that to be the case.

"Q. Was that same practice indulged in by the Erie while you were with it? A. I never knew it to be done by the Erie. I never knew of it and I do not think it was. It has not been done on the Lehigh Valley since my administration.

"Q. Do you recall that the Lehigh Valley Railroad Company ceased to transport on that forty per cent.

1839 basis in the fall of 1901, and established a flat rate? A. I do not know what they did. That is before my administration there.

"Q. The price of coal at tidewater and along the line of the Lehigh Valley Railroad Company; how are line prices fixed, if at all, with reference to tidewater prices? A. I do not know how they are fixed. They are fixed by the sales agent. The line trade is not as competitive as the tidewater trade.

"Q. What do you mean by that? A. I mean that the

1840 competition at line points is not as severe as it is at tidewater. Tidewater is the dumping ground for all surplus that everbody has.

"Q. Competition between whom? A. The railroads and coal companies and coal miners.

"Q. Along the line, your railroad controls practically? A. Not absolutely, because they are cut in by other lines; but, on short hauls, your switching charges can impinge on the tonnage of others, and do, to a large extent.

"Q. Does the Lehigh Valley Coal Company deal in bituminous coal? A. It owns a property called the Snow Shoe Mine on the line of the Pennsylvania Railroad and mines coal from it for its own consumption only. It is not a dealer in bituminous coal. 1841

* * * * *

"Q. This plan of 1876 has been called to your attention? A. I had only just gotten out of the army then.

"Q. It appears that the Lehigh, and also the Delaware, Lackawanna and Western, have built through roads to Buffalo since that time, principally for the purpose of carrying their coal in part, to Buffalo. What reason, as a railroad operating man, can you think of for either of those roads being built to Buffalo, after the plan of 1876, if they were in that combine of 1876, which controlled the whole matter? A. It would take a somewhat lengthy answer to cover all that, but I will try to. I never heard of the plan of 1876 until I heard it in here. I am very confident that it was like all schemes for controling commercial conditions, and that it failed. Originally the Erie Railroad was the only line to Buffalo in that section. The Delaware and Lackawanna came up and connected with them at Great Bend, and they carried the tonnage. When Mr. Gould bought the Lackawanna road, he probably saw there was money in forming a construction company and putting it through to Buffalo, and he did so, and he took that tonnage away from the Erie. Subsequently the Lehigh Valley, through its Pennsylvania and New York railroad, connected with the Erie Railroad at Waverly, had trackage over the Erie Railroad to Buffalo, and owned its own terminal there. The result of that was that the Erie built up a very large Buffalo business. Like other people having a lot of money, making lots of money out of their coal in those days, and having possibly the pride of wealth, they thought it would be a good thing to have a railroad of their own up there. I made every endeavor on the part of the Erie to prevent the building of the Lehigh Valley to Buffalo. I am glad to say now I failed. I might be out of a job if I had not. At all events, they 1842 1843 1844

went on to Buffalo and there are now three parallel and competing lines. If the Erie could have been put in physical shape to handle that entire business, I think it would have been better for all interests, for the merchant, the consumer and the country itself. The production of unnecessary transportation, like that of anything else, is an economic waste. The building of the West shore and the Nickle Plate alongside of roads that could do the work cheaper than they could, was an absolute crime. Had half of that money been expended on the betterment of the existing lines they could have served the public better and more economically.

"Q. In other words, the consumer has to pay the interest on all this extra capitalization that builds needless lines of railroad to get coal to market? A. The public pays the price every time. We can advance miners' wages at the behest of politicians, but the public pays the bill for coal.

"Re-Cross Examination by Mr. McReynolds:

"Q. I omitted to ask you about one thing. How often do the directors of the Temple Iron Company meet, and where? A. The meetings are usually held here, sometimes in Philadelphia, but there are no stated meetings. They are held on call.

"Q. About how many meetings do they hold a year? A. I think we would probably average eight or nine meetings, a year.

"Q. Are the presidents of the roads who compose the directorate, generally present? A. As a rule.

"Q. Are any other meetings of the presidents of these Railroad Companies held? A. No. There are occasional meetings of the Trunk Line Traffic Association, on general freight matters and passenger matters and such things as that.

"Q. No meetings of the anthracite coal carrying presidents, as such? A. No meeting of the anthracite coal carrying presidents, as such, has been held, to my recollection, since 1896.

"Q. Nor is there any informal coming together of these gentlemen? A. There is not. I consult with my

competitors as every avocation in life does, but I have 1849
yet to make an agreement with them.

"Q. You consult with them about rates? A. I ask them what their rates are and what they are going to do. I ask them their prices on coal and how much they are marketing, how business is, and the natural conversation that would ensue between gentlemen in the same line of business.

"Q. You exchange that information freely? A. We do.

"Q. You know what your competitors are going to sell 1850
coal at next month? A. No—if I have any doubts, I ask them, and I presume they tell me the truth.

"Q. And if they have any doubts, they ask you? A. Yes, sir.

"Q. And, of course, you tell them the truth? A. I do, yes. I will not lie to my competitors about the price of coal or rates. They would find me out if I did, and I would lose whatever little shred of reputation I have left.

"Q. You would not make a general change in the price of coal without consultation with your competitors? A. 1851
I would if the market would admit of it and I could sell it.

"Q. What do you mean by that? A. I mean, if commercial conditions were such that I could raise the price of coal twenty-five cents a ton, I would do it and would not ask a man or tell him unless he asked me.

"Q. How about reducing the price? A. I would be a very poor merchant if I did that, although I have a perfect right to do that.

1852

"By Mr. Platt:

"Q. If your competitor reduced the price, would you reduce yours? A. I would be forced to, yes.

"By Mr. McReynolds:

"Q. Why? A. How would I sell my coal? Would you buy coal at twenty-five cents more a ton than you could buy my competitor's for?

"Q. So if you reduced yours twenty-five, you think the others would have to reduce theirs? A. I would pull down the whole industry.

1853 "Q. And, if you would advance yours twenty-five, what would you think of that? A. There might be market conditions at points which I reached and which they did not which would permit me to get a little larger price than they are getting, but at tidewater I certainly could not get any more than they do, nor at competitive points.

"Q. So that the price at tidewater must be fixed by the man who will sell the cheapest? A. It is. The anthracite industry is not a new industry. It is an old one. It is one of the most enticing that men ever entered
1854 into and one in which more money has been lost in the conduct of it, than any similar industry in the world. Large sums of money have been made by some individuals in it, but the business has been conducted in a reckless and wasteful manner in the past, which has resulted in depletion of the territory and unskillful anthracite coal mining, for which the public in the future will certainly have to pay, because there is no possibility of ever again producing anthracite coal at the costs which have obtained in the past.

"Q. Do the meetings of these Temple Iron Company
1855 directors occur substantially each month except during vacation time in Summer? A. Oh, no. I do not recall that either the by-laws or our practice make any specific dates for meetings.

"Q. Who is President of the Temple Iron Company? A. Mr. Baer.

"Q. And you meet upon his call? A. Upon call of the Secretary. Whenever he wants a meeting, he calls the meeting together. There is an executive committee composed of the practical men, Mr. Warriner on the part of
1856 the Lehigh, Mr. Richards on the part of the Reading, and Mr. Loomis on the part of the Lackawanna, who manage the physical portion of the business and the mining. They hold a monthly meeting and are paid for it, and they manage the properties."

Mr. Boles: Mr. Thomas is a man of some years and goes abroad every Summer, and he is abroad now, and has been for a month or more, so I cannot call him for cross-examination, and I do not know until I look at this whether I have any

objection to admitting it without the privilege of cross-examination. 1857

Mr. Warren: As counsel for the Lehigh Valley Coal Sales Company I object to the offer of a transcript of testimony of a witness in a case to which reference is made of another case involving different issues between different parties, without any pretense of showing that the witness who is not now here and has not been subpœnæd, in the pretense of showing that an effort was made to secure his attendance, as being clearly incompetent and as far as this proceeding is concerned incompetent and immaterial as affecting any of the rights of my clients. 1858

Mr. Machen: I understand that you offer no objection as to the authentication of the testimony.

Mr. Warren: No; I said simply the transcript of record in another case. I will add I waive all questions of the manner of the authentication of the record.

Mr. Boles: I do also.

Mr. Machen: Now, I want to offer in the same way the testimony of Mr. Skeele, deceased, in the same case. 1859

Mr. Warren: I object to the offer of the testimony of John W. Skeele, waiving questions of authentication of the record as produced, on the ground that he was a witness called by the Government in a suit involving different issues, issues of different parties in the present proceeding, that there is no offer by the Government to show the relevancy of his testimony to the present proceeding, and speaking for the Lehigh Valley Coal Sales Company, not a party to the proceeding in which the testimony of the witness appears; having no oportunity to examine or cross-examine the witness in that case, the testimony is incompetent, and I cite this case as to the decision of the Judges of the Circuit Court in determining the incompetency of a similar offer made, the decision being by Judges Gray and others. 1860

1861 Mr. Boles: I make the same objection on behalf of the parties I represent, except that as to the Lehigh Valley Railroad Company I admit that it was a party to the former proceedings, but had no opportunity to cross-examine the then deponent as to the issues in this case.

"**John W. Skeele**, a witness for the plaintiff, having
1862 been duly sworn, was examined as follows:

"Direct Examination by Mr. McReynolds:

"Q. What is your business address? A. 143 Liberty Street, New York City.

"Q. What is your occupation? A. General sales agent of the Lehigh Valley Coal Company.

"Q. Over what territory do your duties extend? A. Wherever The Lehigh Valley Coal Company sells its coals.

"Q. Give us in a general way where that is. A. That
1863 is New England, New Jersey and Pennsylvania, and New York and Canada, and Western States.

"Q. How much coal does The Lehigh Valley Coal Company sell annually? A. It mined last year and purchased about nine million and a half tons.

"Q. How much of that was mined by it and how much purchased? A. I will have to estimate that. I can give it to you about right. We purchased about 40 per cent.

"Q. Are your purchased coals and your mined coals kept separate? A. You mean stocked separate?

1864 "Q. Yes. A. No, sir.

"Q. Are the sales of your purchased coals and your mined coals kept separately on the books? A. No, sir: not in my office.

"Q. You are unable, then, to tell where your purchased coal goes and where your mined coal goes? A. I couldn't tell. When we took it we put it all together. We fill orders for any one territory from any of those mines; distribute our orders.

"Q. Where are the coals of The Lehigh Valley Coal Company mined? A. In the Wyoming region, in the Lehigh region, and in the Schuylkill region.

"Q. Does The Lehigh Valley Railroad Company reach 1865
all three of these regions? A. Yes, sir.

"Q. Are all the collieries operated by The Lehigh Valley Coal Company on the lines of the Lehigh Valley Railroad Company? A. All that The Lehigh Valley Coal Company operate themselves, I think, are.

"Q. Are all the collieries, the output of which is purchased by The Lehigh Valley Coal Company, on the lines of the Lehigh Valley Railroad? A. No, sir.

"Q. Which ones are not? A. Coal which we buy from Coxe Brothers & Co., Incorporated, is on the line of the 1866
Delaware, Susquehanna and Schuylkill Railroad.

"Q. The Delaware, Susquehanna and Schuylkill Rail-Company is now operated by the Lehigh Valley Railroad, is it not? A. I am so informed.

"Q. Are any other of the coals which are purchased by The Lehigh Valley Coal Company produced by collieries served by the lines of any other railroad system than the Lehigh Valley Railroad? A. I think not.

"Q. Does The Lehigh Valley Coal Company purchase coal in each of the three anthracite coal regions of Pennsylvania? A. They do not purchase any in the Schuyl- 1867
kill. They do in the Wyoming and what you call the middle district.

"Q. So far as you are aware, does the Lehigh Valley Railroad carry coals for any coal company owned by a railroad company? A. You mean excepting The Lehigh Valley Coal Company?

"Q. Yes. A. I do not think they do.

"Q. Does The Lehigh Valley Coal Company sell coal on account of anybody except itself? A. Yes, sir.

"Q. What other companies and what operators does 1868
it sell coal for? A. The G. B. Markle Company, now a corporation; until within a year G. B. Markle & Co.

"Q. What is the output of the G. B. Markle Company? A. I couldn't tell you.

"Q. Can you give us an idea? You market it, don't you? A. Yes; we do. My estimate may not be very close to the mark, but I should think a million and a half tons.

"Q. Where are the coals of G. B. Markle Company mined? A. In the Hazelton region.

1869 "Q. Is that in the middle region? A. Yes; that is the middle region.

"Q. Near what town? A. Hazelton, or Jeddo.

"Q. Where are those coals sold? A. Most of that coal is sold east of the mines. It comes this way.

"Q. Is much of that coal sold in the New York market? A. Yes, sir.

"Q. Is it sold separately from the coals of The Lehigh Valley Coal Company? A. Yes, sir.

"Q. It is kept separate from the time it leaves the
1870 breaker until it is delivered to the cusomer? A. Yes, sir.

"Q. What does The Lehigh Valley Coal Company get for marketing that coal? A. Twelve or twelve and a half cents per ton.

"Q. In all sizes? A. I am not sure. We do on prepared sizes. I am not sure as to the others.

"Q. Tell us in a practical way how that coal is handled. Where is it delivered by the Markle Company to The Lehigh Valley Coal Company? A. We take orders for the coal, send them to Markle, and he makes requisition
1871 for cars and loads that coal, and it is shipped direct to his cusomers in direct shipments. When the demand does not absorb it all some of it is stocked at Perth Amboy. That is the only stocking place for that coal.

"Q. Who controls the price at which that coal is sold? A. G. B. Markle Company.

"Q. Do they instruct you at what price to sell it? A. Yes, sir.

"Q. Are those prices the same as the prices of The Lehigh Valley Coal Company? A. Generally; no.

1872 "Q. How much difference is there? A. We get from 10 to 30 cents per ton more.

"Q. For the Markle Company? A. Yes, sir.

"Q. Does The Lehigh Valley Coal Company get anything out of that coal except its 12½ cents? A. No, sir.

"Q. That is all of every sort of payment that it gets? A. That I know anything about.

"Q. What does the Lehigh Valley Railroad get out of that? A. They get their freight, I suppose. I do not know anything about the Lehigh Valley Railroad Company on that.

"Q. Do you know what the arrangement is between 1873
Markle & Co. and the railroad about the freight on that? A. No, sir.

"Q. Who pays that freight? A. I think that freight is paid by The Lehigh Valley Coal Company, but it is handled in the accounting department. I don't handle it.

"Q. You think that freight is paid by The Lehigh Valley Coal Company? A. Yes, sir.

"Q. Do you know how settlements are made between The Lehigh Valley Coal Company and Markle Company? A. The Lehigh Valley Coal Company deducts 1874
the freight and the commission and pays him the balance monthly.

"Q. What else does Markle & Co. get out of this coal? A. Nothing that I know of. I am a little in doubt about that freight whether we deduct that or not—but I think we do. I think that is done in our accounting department, and send him the balance. I think we pay it.

"Q. How about the weights? Do you know anything about the weights upon which settlement is made? A. I do not know whether that coal is weighed at the mines 1875
or at Packerton. I do not know where that coal is weighed, whether at the mines or the railroad scales.

"Q. There might be a secret arrangement about the shipping of this coal with reference to which you would not be advised? A. I do not think so.

"Q. There might be, I say? A. It is not probable.

"Q. Did you make the contract with Markle & Co? A. No, sir.

"Q. Who did A. I don't know. It was made before my time.

"Q. Then your knowledge of the contract is only 1876
what has been told you? A. I have seen it a long time ago.

"Q. What is it? Written? A. Yes, sir.

"Q. Where is it? A. That I don't know.

"Q. How long has this arrangement existed between G. B. Markle & Co. and the G. B. Markle Company and The Lehigh Valley Coal Company? A. I couldn't tell you.

1877 "Q. Give us an idea. You said a long time awhile ago. A. It has been in existence for six or seven years.

"Mr. Schaperkotter: It has been since 1889.

"By Mr. McReynolds:

"Q. How much coal does The Lehigh Valley Coal Company sell f. o. b. New York Harbor? A. I couldn't separate those figures. I can tell you how much the New York office sells.

"Q. How much? A. A little over four millions of
1878 tons.

"Q. And in what territory does the New York office sell? A. New Jersey, and part of New York State, including New York City, and New England.

"Q. Does The Lehigh Valley Coal Company issue circulars from time to time to the trade, showing at what price its coal will be sold? A. Where?

"Q. Anywhere? A. Yes, sir.

"Q. Where? A. Buffalo, Chicago—most all of the sales agencies excepting New York City. We do not
1879 issue any there.

"Q. How long have the selling prices of coal on prepared sizes by The Lehigh Valley Coal Company, f. o. b. New York Harbor, been the same that they are to-day? A. Since September 1.

"Q. September 1, the prices became $5 per ton? A. Yes; at the harbor.

"Q. That is f. o. b. New York Harbor? A. Yes, sir.

"Q. What point on the harbor? A. That is what we call "up river." The lower ports it is 5 cents less.

"Q. What do you mean by "up river"? A. Hoboken,
1880 Jersey City.

"Q. That is, if it is delivered f. o. b. at Hoboken or Jersey City, it is $5? A. Yes, sir.

"Q. And if it is delivered also upon the harbor at Perth Amboy, it is 5 cents less? A. Yes, sir.

"Q. Why the difference? A. There is a difference in the water freights. That coal has to be handled by water at 5 cents a ton—about 5 cents a ton.

Q. What was the price of your prepared sizes f. o. b. New York Harbor, Hoboken, and Jersey City, on the

1st day of April last? A. $4.50 in New York Harbor, 1881
with the same difference for Perth Amboy.

"Q. Then, it increased 10 cents per month each month thereafter until it became $5? A. Yes, sir; the first of September.

"Q. How long have those prices—the April prices being $4.50 and the September prices $5—been in existence? A. I think since 1902.

"Q. What have been the prices of The Philadelphia and Reading Coal and Iron Company during that same period? A. I couldn't tell you.

1882

"Q. Haven't substantially all of what are known as the railroad coal companies, who sell coal f. o. b. at New York, observed or published at the same prices that have been observed or published by The Lehigh Valley Coal Company since 1902? A. I couldn't tell you that.

"Q. Don't you know what your competitors are doing? A. I try to, but I do not always.

"Q. Don't they advertise to the public the self-same prices that you do, and haven't they done that since 1902, in New York Harbor? A. I can't say that.

"Q. What is your observation about it? It has been 1883
your business to know, has it not? A. I told you I try to find out that their prices are.

"Q. As a result of your observation? A. Sometimes I find they are the same as ours and sometimes I find they are not.

"Q. You mean by that that they are giving some slight discount from their published rate? A. That is the common report.

"Q. Haven't their published rates been the same since 1902 as yours? A. I do not know that they publish 1884
a circular which would make a rate. I think the understood rate—I don't know. I do not know that they publish a circular.

"Q. Has not the New York rate of all these railroad coal companies f. o. b. New York been the same on the prepared sizes since 1902? A. I do not know that it has.

"Q. In making settlement with Markle Company is anything deducted for waste? A. I think so. On coal which goes over the dock.

1885 "Q. How much? A. The actual wastage.

"Q. How much does that amount to? A. I would have to estimate it for you, 2 per cent.

"Q. Does that 2 per cent represent approximately what the actual waste is? A. I think the actual waste is deducted.

"Q. And that amounts to approximately 2 per cent? A. I should say so.

"Q. You said your company issued no circulars at New York? A. No, sir.

1886 "Q. What is the difference between your New York prices and your Buffalo prices? A. The New York price to-day is $5. The Buffalo is $5.50.

"Q. Is not the difference always 50 cents? A. About; yes, sir. 'Always' is a term there that I do not know. It generally is.

"Q. What is the difference between your New York prices and your Chicago prices? A. The New York Harbor price to-day is $5 gross ton. The Chicago price is $6.50 net ton.

"Q. Net ton means 2,000 pounds? A. Yes, sir.

1887 "Q. And gross ton 2,240 pounds? A. Yes, sir.

"Q. How does the trade in New York find out what your prices are to be? A. We write them, and our traveling men call upon them.

"Q. How long in advance do you quote these prices? A. Advance of what?

"Q. The time you quote them? A. How long in advance do we quote this price at the time we quote them?

"Q. If you were quoting prices to-day, how long in advance of to-day would you quote them? A. You mean

1888 how long would the prices be good that I quoted to-day?

"Q. Yes. A. They are subject to change without notice.

"Q. But for how long a time does the quotation cover? A. The quotation would read for coal shipped during this month, but we would reserve the right to change those prices.

"Q. But you have not changed prices since 1902? A. In 1906, I think, there was a slight difference.

"Q. You raised the prices? A. No; I think we did not reduce the price in April in 1906. 1889

"Q. You did not issue your ordinary reduction that year until May? That is the difference? A. I think that is it. That is my impression.

"Q. Have you ever issued circulars for the New York market? A. I think not.

"Q. How long have you been in charge of the New York office? A. Since the spring of 1900.

"Q. Who connected with The Lehigh Valley Coal Company is authorized to make prices on coal? A. I can tell you who I got my instructions from. From the president or vice-president. 1890

"Q. You have no power to make the prices? A. No, sir.

"Q. From whom do you actually get those instructions—from the vice-president or the president? A. Sometimes from one and sometimes the other. Generally the first vice-president.

"Q. What is his name? A. William H. Sayre.

"Q. Do you know who fixed those prices in 1902, which have been adhered to ever since? A. No, sir. 1891

"Q. Are you on salary or do you get a commission? A. Salary.

"Q. Has any estimate ever been made up, that you are aware of, of the cost of selling coal in New York Harbor by The Lehigh Valley Coal Company? A. There is on the cost of selling coal by the New York office.

"Q. How much is it? A. I think it would average about 4 cents.

"Q. What do you mean to include in that 4 cents? A. That is just the selling. 1892

"Q. What is the wastage? A. I estimated that at 2 per cent. a while ago.

"Q. Do you mean to say that the total cost of selling coal through the New York office, including bad debts and all that, is 4 cents? A. Oh, no; not including bad debts.

"Q. What is that, including bad debts? A. I couldn't tell you.

1893 "Q. If you collected everything and had no bad debts, then it would be about 4 cents. It runs along about there.

"Q. That does not include the expenses coming from bad debts? A. That is actual cost of selling our coal, without anything deducted. That includes all of our coal. If you confine it to prepared sizes, the tonnage would be less, and the cost of selling more, accordingly.

"Q. What would be the cost of selling the prepared sizes? A. I couldn't tell you. I made an estimate there
1894 —I think you have it before you—at one time, but I think that was high.

"Q. You said in the Hearst case the cost of selling coal was 10 cents a ton? A. No. I estimated it. I estimated on prepared coal.

"Q. You said prepared coal was 10 cents at on? A. Yes. This price that I have given you takes in all our coal, steam sizes and all. That was the estimate I made at that time.

"Q. At what points on New York Harbor are coals carried by the Lehigh Valley Railroad landed? A. Perth
1895 Amboy.

"Q. How does the coal that you get at Hoboken and Jersey City come from the mines? In answering your first question, you said, "landed on New York Harbor." I understood you to mean f. o. b. coal landed in boats on the harbor. A. At Jersey City we do not deliver any coal to vessels.

"Q. That is, for consumption in Jersey City, is it? A. Yes; and some across on the ferry by teams.

"Q. Where are your offices in New York? A. 143
1896 Liberty Street.

"Q. Where are the offices of The Philadelphia and Reading Coal and Iron Company? A. The New York offices are 143 Liberty Street.

"Q. Close to yours? A. They are several floors from us.

"Q. In the same building? A. Same building.

"Q. Who is their general agent located there? A. Their New York agent?

"Q. Yes. A. Frank Oberander.

"Q. Do you sell coal in Brooklyn? A. Yes, sir. 1897
"Q. The same prices as in New York? A. Yes, sir.
"Q. To whom do you sell coal in New York; dealers or users? A. We sell to the dealers, exclusively. We might sell to factories or manufacturers.
"Q. What is the water freight from Perth Amboy to alongsid New York? A. Seventeen to 20 cents, I think.
"Q. It is about 5 cents less from Hoboken and Jersey City and Weehawken and Edgewater, is it not? A. Generally it is that difference.
"Q. There is some slight variation in the water 1898
freight in New York Harbor? A. Sometimes when the boats are very plentiful you can get a boat for 17 cents, or at other times you would pay 20.

"Cross-Examination by Judge Campbell:

"Q. The gentleman has been very curious about the coincidence of having several coal offices in 143 Liberty Street. How long have you known that building? A. Ever since I have been in New York.
"Q. It is an office building, is it not? A. Yes, sir. 1899
"Q. And occupied by numbers of coal offices besides those of these companies that are referred to? A. Yes, sir.
"Q. The general offices of the Lehigh Valley Railroad Company are also located there? A. One of them.
"Q. Occupying nearly a whole floor of that building or perhaps more? A. More.
"Q. The committees of the trunk lines and other forces and so forth, are located there also? A. I understand so.
"Q. Also barber shops and other facilities are located 1900
in that building? A. Yes, sir.
"Q. In other words, it is a building that is held out for rent, and anybody who is able and willing to pay the rent when there is a room vacant can get one? Is not that a fact? A. I assume it is.
"Q. Is not that what Mr. Doughty has that building for? A. Yes.

Mr. Machen: We also offer in evidence portions of the testimony of Dr. Herbert M. Howe

1901 as a witness for the petitioner in said case of the United States of America against the Reading Company, in behalf of the United States and others.

Mr. Warren: I object to this offer first because it is incompetent to offer certain questions and certain answers to those questions as an extract from the deposition of a witness. If the deposition is to be offered it must be offered in its entirety. Second, it is a deposition of a wit-

1902 ness taken in a proceeding where the issues differ from those in the present proceeding, where the parties were different from my clients, which are not a party, and had no opportunity to cross-examine the witness. There is nothing to show the relevancy of the testimony of the witness to the present proceeding so far as the interests of my client are concerned, and no effort made to justify the admission of such extracts of the testimony.

1903 Mr. Boles: I make the same objection on behalf of the parties I represent, except that as to the Lehigh Valley Railroad Company, I admit that it was a party to the former proceeding but had no opportunity to cross-examine the then deponent as to the issues in this cause.

Mr. Wheaton: Note the same objection in behalf of the Lehigh Valley Coal Company to this offer and to the preceding offer.

Mr. Warren: I would like to add another objection; that all of these offers mainly have to

1904 do with what counsel for the Government speak of as general conditions five years ago.

Mr. Machen: On behalf of the Petitioner we express our readiness to incorporate in the testimony in this case any portion of the deposition of Herbert M. Howe which has not been offered in evidence by us but which may be indicated by counsel for the defendants, or any of them, as bearing in any way upon the issues of this case or as relating to the portions of his testimony which have been offered by the Government.

"**Dr. Herbert M. Howe**, a witness for the plaintiff, having been duly sworn, was examined as follows: 1905

"Direct Examination by Mr. McReynolds:

"Q. Where is your residence? A. 1622 Locust Street, Philadelphia.

"Q. What is your occupation? A. I am a member of the firm of A. Pardee & Co., coal operators.

"Q. Are you a partner in that firm? A. Yes, sir.

"Q. How long have you been connected with that firm? A. I can not give you exactly the year, but in the early nineties, as member of the firm, and closely associated with it for a much longer time than that. 1906

"Q. What is the business of A. Pardee & Co.? A. Mining coal.

"Q. What sort of coal, and where? A. Anthracite coal, at Hazleton.

"Q. Do they own collieries? A. No; they lease collieries.

"Q. Have they ever owned collieries? A. I think not.

"Q. From whom do they lease? A. From the Cranberry Improvement Company.

"Q. How many collieries do A. Pardee & Co. operate? 1907
A. Two.

"Q. How long have they been operating those collieries? A. I am not quite sure, those particular ones, but they have been operating collieries since in the early fifties, I think. I am answering as I believe. I am not sure as to the date. Mr. Fell and Mr. Pardee were the original members of A. Pardee & Co., and they were almost the pioneers as coal operators in that district, and they once operated quite a number of mines that now the Lehigh Valley are operating, the old Hazleton mine and several others. 1908

"Q. How much coal have A. Pardee & Co. taken out of these two collieries on an average during the last five years? A. I do not remember exactly the amount. I can tell you this, that when conditions are favorable, barring accidents, we can get out about 2,000 tons a day.

"Q. About how much do you get out? I do not mean to be accurate to the thousand tons, but give us an ap-

1909 proximate idea of your actual output. A. I would like to answer you accurately in a matter of that kind, for I do not remember the figures exactly, and I have to guess.

"Q. Have you mined during the last five years to your capacity? A. As far as we could get cars; yes, sir.

"Q. That is what I want to get at. A. I am telling you.

"Q. Have there been times during the five years when you could not get cars? A. Yes, sir; there have.

"Q. How much has it reduced your output from what
1910 it would have been if you could have gotten cars? A. That I can only guess at. I can not tell you. There have been times when our output has been interfered with from breakages in our apparatus, you know; that is one thing that stops us. If everything runs favorably, we can get out 2000 tons a day.

"Q. Have you mined during the last five years on an average 500,000 tons annually? A. In that neighborhood, I should say.

"Q. What do you do with the coal that you mine?
A. It is sold to the Lehigh Valley road.
1911

"By Mr. Schaperkotter:

"Q. Lehigh Valley who? A. The Lehigh Valley take it; the Lehigh Valley Coal Company, I suppose.

"By Mr. McReynolds:

"Q. Under what sort of an agreement are these coals sold? A. By the same contract that was made, I think, with a good many other operators—65 per cent of the tide price.

"Q. Is there a written contract existing between A.
1912 Pardee & Co. and The Lehigh Valley Coal Company? A. There is; yes.

"Q. When was it entered into? A. There again I have to guess—several years ago.

"Q. Can you fix it by any public event, the date of this contract? A. No, I cannot.

"Q. Was it subsequent to the coal strike of 1902, or prior to that time? A. It was prior to the strike in which Mr. Roosevelt took part.

"Q. It was about 1901, was it not? A. I should say 1913
in that neighborhood. I can not give the date accurately, so I do not profess to give it.

"Q. Under the terms of that contract do all the coals that are mined by A. Pardee & Co. go to The Lehigh Valley Coal Company? A. They are all taken at the collieries in their cars.

"Q. That contract covers the life of the collieries, does it not? A. The life of the collieries, so far as we are concerned; our lease has five years more to run. If they are emptied in that time, it covers the life of the collieries. If not, it depends on whether it is renewed. 1914

"Q. It covers the length of your lease, at all events? A. It covers the length of the lease.

"Q. Do you know what becomes of the coals that your company delivered to The Lehigh Valley Coal Company under those contracts? A. They sell it, for all I know.

"Q. But do you know where they sell it? A. No; I do not.

"Q. You do not know to what markets it goes? A. I do not.

"Q. Where do your company deliver that coal, and 1915
how? A. At the breakers, into the cars.

"Q. To whom do you deliver it? A. We put it in the cars that, I suppose, belong to The Lehigh Valley Coal Company.

"Q. Does The Lehigh Valley Coal Company own cars? A. I do not know. I can not trace the ownership of those cars. The cars on the Lehigh Valley tracks come under our colliery and receive the coal and take it away."

* * * * *

1916

"Q. In what region are the collieries operated by Pardee & Co.? A. They are in Hazleton, Luzerne County.

"Q. Is that in the Lehigh region? A. In the Lehigh region.

"Q. You are settled with upon the average prices of coal from the Lehigh region, are you not? A. Yes, sir.

"Q. Prior to the time that A. Pardee & Co. entered into the present existing contract with The Lehigh Valley Coal Company, how did it dispose of the coals pro-

1917 duced? A. Primarily, in the earlier history of the firm, the coal was sold by ourselves in various places, and the first contract that was made for selling coal was made with the Reading Railroad.

"Q. When was that? A. The date of it I do not remember; you probably know. I should think it was about the time that the Reading absorbed the Lehigh Valley and the Jersey Central.

"Q. What was the nature of that contract? A. As I recollect—I am not sure about it—we got 60 per cent of
1918 the tide price.

"Q. And delivered the coal at your breakers? A. The same as we do now, exactly.

"Q. And to the same railroad company? A. Yes, sir.

"Q. Prior to that contract with the Reading for the sale of the coals of Pardee & Co. you say they were sold by the partnership itself in the various markets? A. Yes; we had a department in New York and sold coal to customers anywhere in the country.

"Q. Over what lines did you ship the coal at that time? A. The only line that reaches the breakers is
1919 the one I have already designated.

"Q. That is the Lehigh Valley? A. Yes, sir.

"Q. Where is the first point that your coal could have been put on the line of some other system of railroad? A. I am not sufficiently familiar with the various railroad connections to answer that question correctly. We always deliver the coal, whether we sold it ourselves, whether we marketed it to the consumer or to the railroad company; it always went in the cars of the Lehigh Valley, because that was the only line that reached our
1920 collieries and our only method of getting to market.

"Q. So your coal had to start over its rails? A. Yes.

"Q. You do not know at what point it could have gone over the rails of other systems? A. No; it could have been transshipped at any point where other lines meet that road.

"Q. What freight rate prior to the time that you made this first contract with the Reading road was charged on prepared sizes to New York? A. I do not know.

"Q. Was it more or less than now? A. I do not know.

"Q. Were you acquainted with the other operators 1921
in the Lehigh region prior to the time you first made a contract with the Reading for the sale of the coals? A. You mean personally acquainted with them? A. I knew some of them; yes.

"Q. Were there many independent operators there prior to 1892? A. I do not know how many; there were a good many operators, I suppose.

"Q. Did they have independent selling arrangements through which they sold their coal? A. Some had, I believe, and some did not.

"Q. Do you know when this plan of selling coal to the 1922
coal companies controlled by the various railroad systems was inaugurated? A. I do not know that date.

"Q. Were you at any time connected with what was called the Independent Anthracite Operators' Association? A. I was.

"Q. What was you connection with it? A. I was Vice-president of it.

"Q. What was that association? A. It was simply an association of individual operators who believed that they could improve their interests by getting together. 1923

"Q. It was a voluntary association, was it? A. Entirely.

"Q. When was that association formed? A. I can not tell you the date.

"Q. Cay you give us it approximately? A. No; I can not.

"Q. Was it as early as 1890? A. I should think very probably it was, but I really do not remember the date.

"Q. What was the line along which that association proposed to operate in order to better the conditions of 1924
the independents? A. They always believed that the 60 per cent was an unfair settlement for that coal, and I think perhaps in part the influence of that association resulted in an increase to 65 per cent. But that is only an opinion. I do not know whether it has or not. At any rate, that was the effort of the association, to better those rates of settlement.

"Q. Was that association in operation before Pardee & Co. entered into the contract to sell their coals on a percentage basis? A. No; I think not.

1925 "Q. How many members of that independent association were there? A. I could only give the crudest kind of a guess. It was very general. It was exceptional where an individual operator was not a member at some time; but I can only guess as to the number.

"Q. Give us the best of your recollection about it. You must know something about it? A. I guess 60 or 70.

"Q. How many of those men are now producing coal? A. I do not know.

1926 "Q. Prior to the time that Pardee & Co. entered into this 60 per cent arrangement for the sale of their coal, how was the freight rate which they should pay upon coal transported to New York determined? A. I was not a member of the firm at that time. I really have no knowledge of the details of those arrangements. I had nothing to do with the firm at that time.

"Q. Who would know about that? A. Nobody that I know of that is living; that is, no member of the firm. Mr. Fell is dead; Mr. John Fell is dead, and there is nobody that I know of.

1927 "Q. Do you remember when this advance from 60 to 65 per cent was granted to the independent operators for the sale of their coal? A. I remember the event. I can not say I remember the date.

"Q. What was the event that fixes it? A. A new contract—a contract was made at that rate.

"Q. Can you give us an event that happened about that time that will enable us to fix the date? A. No; I can not.

"Q. Was it not in the fall of 1900, after the strike?

1928 A. I do not remember. I could easily tell by looking at the contracts, but I do not remember.

"Q. Was the advance granted at that time general to what were called the independent operators, or was it confined to your concern? A. So far as I know, it was general. I have never seen any other contract than ours, therefore, I do not know.

"Q. You were one of the committee, were you not, appointed by the independent association to negotiate in reference to a change from 60 to 65 per cent? A. I was; yes, sir.

"Q. Who was in that committee? A. Mr. Truesdale, 1929
Mr. Baer—I am trying to remember other names.

"Q. Mr. Connell? A. No; Mr. Connell was not.

"Q. Mr. Thomas? A. Yes; Mr. Thomas was.

"Q. Mr. Cumming? A. Mr. Cumming, yes; and there was an individual operator I am trying to think of.

"Q. Mr. Kemmerer? A. Mr. Kemmerer; that is the man I am trying to think of.

"Q. Mr. McAnulty? A. Mr. McAnulty, yes; representing Mr. Connell, I think.

"Q. Mr. Truesdale was the president of what road? 1930
A. Of the Delaware, Lackawanna and Western, I believe.

"Q. The Delaware, Lackawanna and Western Railroad? A. Yes, sir.

"Q. Mr. Baer was president of what railroad? A. Of the Reading.

"Q. And Mr. Thomas? A. Lehigh Valley.

"Q. What interest did Mr. Cumming represent and how? A. I think he represented the Erie, but that I am not sure of.

"Q. What was the purpose of these conferences? A. 1931
To determine what would be fair rates to allow on different sizes of coal.

"Q. Fair rates for whom to allow? A. For the company buying the coal.

"Q. In other words, you were, upon the part of the independents, consulting with these gentlemen as to proportion of tide prices should be allowed to the sellers? A. Yes, sir.

"Q. Whom did these gentlemen you have spoken of represent—Mr. Truesdale, Mr. Baer, and Mr. Thomas? 1932
A. I do not know whom they represented any better than anybody else. I suppose they represented their interests.

"Q. They were presidents of systems that led into that region, were they not? A. They were.

"Q. What was the result of these conferences? A. The ultimate result was the formation of the contract that now exists between several or a number—a good

1933 many of the individual operators, how many I do not know—and the railroad company.

"Q. Were these individual operators representing the association for which you and Mr. Kemmerer spoke, located in all three of the anthracite coal regions or were they confined to some one? A. You mean the members of the association?

"Q. Yes. A. All of them, I think.

"Q. The southern and the middle and northern regions all were represented? A. I think all—I think the Schuyl-

1934 kill and the Lehigh Valley——

"Q. And the Wyoming? A. And the Wyoming, were all represented.

"Q. You say the result of these conferences was that an agreement was made that 65 per cent instead of 60 per cent should be allowed to independent operators? A. Yes, sir.

"Q. Was that to apply in all the regions? A. It was optional with individual operators whether they would accept that. Some accepted it and some did not, I believe.

1935 "Q. But if the individual operators wanted it, it was to be granted to all operators in all these sections? A. So far as I know.

"Q. Was a form of contract discussed and agreed upon at these conferences? A. A form, so far as we agreed upon what was right with regard to different sizes, that ultimately formed the basis of the contract.

"Q. Was the contract which A. Pardee & Co. entered into with The Lehigh Valley Coal Company in harmony with this general form of contract that was agreed

1936 upon? A. Yes, it was, so far as I remember.

"Q. And set out substantially the terms of that agreement? A. So far as I remember.

"Q. What was the claims put forward by the independent operators under which they maintained that they should have more than 60 per cent of the tide-water prices? A. There was the belief on the part of the individual operator that he was not getting a fair proportion of the value of the coal, a fair compensation for the labor of mining it. The costs of mining are con-

tinually increased with the depth of the mines and the exhaustion of the larger veins, and everything of that kind, and it was thought that the carrying companies were receiving an unfair proportion of their freight rate. 1937

"Q. Why did not the independent operator, instead of asking for this increase from 60 to 65 per cent, send his own coal to market and sell it? A. It is very easy to say that. If you could command the cars when you wanted them, you might do it; but if you can not, what are you going to do?

"Q. Why could you not command the cars? A. Because you could not get them if you did. 1938

"Q. Why could you not get them? A. Because they would not have them, they did not have them. They would have their own reasons, which we would have no means of ascertaining the correctness of. You simply could not get cars, that is all.

"Q. In other words, if you had undertaken to ship your own coal to New York and sell it, your requests for cars would not have been promptly met; that is your idea? A. That is the idea exactly. 1939

"Q. How about the freight rate at that time over these railroads that led from the coal regions to tide water; was it high or low? A. We always thought the rates were high.

"Q. It was so high that it actually paid you better to take this 65 per cent than it did to take your own coal there and sell it?

"Judge Moot: I object, on the ground that this question is leading and improper.

1940

"A. We believed that, in view of the fact that we could get cars better, that it would pay us better to make the contract than it would to run the chance of not getting cars, and having the cost of maintaining individual establishments for the sale of coal in the various markets.

"Q. In other words, you were afraid to undertake to build up a trade in New York, because of the fact that you were not at all sure that you could get cars in which to send your coal?

1941 "Judge Moot: That question is also objected to as leading and improper. A government counsel should not put such questions to his own witness.

"Mr. Warren: I wish to add to that objection, that inasmuch as it is apparently an effort to get from this witness an expression of the opinion of other individual operators, it is incompetent.

"A. That was only one element in the question. The question was a broader one than that.

1942 "By Mr. McReynolds:

"Q. What were the other elements? A. The question was the cost and the storage of coal; before we had a large accumulation of coal at Perth Amboy, and there were large costs connected with the maintenance of the selling department in the various places; that, together with the uncertainty about the ability to get cars, and the certainty of settlement if we sold to one person instead of having to look up the credit of various customers—all those questions entered into the expedi-
1943 ency of returning to the old method of selling coal, or the new.

"Q. Were these conferences, between you as a member of this committee of the independents and Mr. Truesdale and others, about the time that the 65 per cent contract between Pardee & Co. and The Lehigh Valley Coal Company, was entered into—I am trying to fix the date. A. It was prior to that. The contracts followed; I do not remember how soon after.

* * * * *

1944 "Q. You were once an official of the Independent Anthracite Operators' Association; what do you mean by an independent anthracite operator? A. It only designated a voluntary association of those operators producing coal.

"Q. I asked you what you mean and what was meant during the life of this operators' association by an independent operator? A. I never attached any particular significance to that detail. I do not know what it meant,

except that they were individual operators who got together. Why they called themselves particularly independent, I really can not say. 1945

"Q. They were contradistinguished from some other operators, were they not? A. I do not know of any other operators at all, except the railroads who were operating.

"Q. Precisely. Then, independent operator meant a man who did not belong to the railroad? A. Yes, sir; it meant that.

"Q. Are you acquainted with the operations in the Lehigh region; the number of operators who are still independent there? A. No; I do not know. 1946

"Q. What became of this Independent Operators' Association? A. It died a natural death. There was no determination that it should end, it simply stopped, that is all.

"Q. After you got these 65 per cent contracts through, it stopped? A. Yes; it did not have a sudden stopping, it just did not reconvene, that is all.

* * * * *

"Q. These two collieries you are now working, have you any way of telling about how many years Pardee & Co. have been operating those two collieries? A. No; I really—— They have been operated since the early fifties, but I do not know whether these two mines—I do not know how long they have been operated; but you know Pardee & Co. operated a number of other mines in Hazleton, belonging to the Lehigh Valley; in fact, I think that Mr. Fell and Mr. Pardee sold to the Lehigh Valley a number of those mines that they now possess there. That I do not know positively, but I think so. They were among the early operators in that region, but at what date they became the operators of these two mines, the Cranberry and Crystal Ridge, I cannot say, for I do not know. 1947 1948

"Q. Were they operating these two mines when you first became actively connected with the business? A. Yes, sir.

"Q. And had been for some time? A. Had been for some time; yes, sir.

1949 "Q. They were already developed mines? A. Yes, sir.

"Q. With their own breakers, I assume? A. Yes, sir.

"Q. When you speak of their operating mines of the Lehigh Valley, I infer—and correct me if I am in error—that you mean by that that they leased land from the Lehigh Valley and developed collieries and operated them? A. Yes. They paid the royalties to the Lehigh Valley for years on coal produced at the mines which now the Lehigh Valley operate, themselves.

1950 • • • • •

"Q. Perhaps you can tell me another thing. Do you know whether they were ever—Pardee & Co. were ever connected with any railway coal interests of any kind in any way except in so far as they contracted to sell their coal to the Lehigh Valley? A. I can not answer that. Mr. Fell's interests, probably you know, were very large and very general. Mr. Fell was at one time president of the Lehigh road himself and had large interests in the Lehigh Valley, and he had large interests as a coal
1951 operator. Just how they come together there is no use in my guessing about.

• • • • •

"Q. How has this contract worked in the case of your own collieries and your own company, generally and broadly speaking? Has it been the subject of many disputes, or anything of that kind, or has it, on the whole, worked well? A. I think it has worked about as fairly as you could expect that kind of a contract to work. If I could get all the cars I want when I wanted them, I
1952 would rather sell our own coal a great deal.

"Q. When you come to getting all the cars you want when you want them, do you know whether your collieries in that respect have been any exception to the other business interests of the country, when there has been a congestion like there was, say, two years ago? A. I do not know.

"Q. Has there been difficulties, for instance, in getting cars to your collieries at all times, or has it been only at exceptional times when these difficulties about getting

cars have occurred? A. We have not had difficulties 1953
lately, because the company is not obligated to take every pound of coal that we can get out. We get out what they want to take and they supply us cars accordingly. They may say there will be a restriction, and they restrict us.

"Q. What you mean is that there is a provision in the contract for getting things out monthly on some kind of a fair basis? A. The Lehigh Valley has a right to distribute the coal that they are going to handle among those who are under contract with them—I can 1954
not control that—and they supply us cars accordingly. I mean to say that, as an individual operator, if I were on two railroads, instead of one, if the Pennsylvania Railroad reached our colliery and I could get cars as I wanted them, I would a great deal rather sell our own coal and do agreat deal better business than we do now.

* * * * *

"Q. Did you mean to have the record carry the inference that you thought the Lehigh unjustly discriminated against you by not giving you cars, or in any way? A. 1955
No, sir; I do not know that they do. I have no reason to think that they do not treat us as fairly as they treat others. All I mean to say is, the Pennsylvania Railroad is near us, and if the Pennsylvania Railroad reached our colliery as well as the Lehigh Valley we could have a great deal larger output, because we could have an outlet on their road as well; but it does not.

"Q. About how near is the Pennsylvania to your collieries? A. Very near, indeed. I can not tell you how many feet, but very near.

"Q. A mile or so? A. Yes, within that. 1956

"Q. It has been for about how many years? A. I do not know, and I do not know that I am strictly right when I say within a mile, but I know it is right in the neighborhood. I come from Hazleton by the Pennsylvania and the Lehigh Valley, and I do not remember the exact relation of their depot or their line to the colliery, but it is not remote.

"Q. Has it ever been suggested by anybody to the Pennsylvania Railroad or to your company that a spur

1957 should be built, either by your company or the Pennsylvania, to your collieries? A. I wanted it very much.

"Q. Did you take it up with the Pennsylvania? A. Not officially, but I knew it could not be done, because the Lehigh Valley would not have favored it, naturally.

"Q. You mean that if the Lehigh would not have favored it, the Pennsylvania would not have done it; is that your idea? A. That is my idea; I do not know as it is right.

* * * * *

1958 "Q. You said a while ago, if I understood you, that these collieries not being operated by Pardee & Co. could produce much more coal than they are producing? A. I said we could produce about 2,000 tons a day.

"Q. But, in answer to Judge Moot a while ago, I understood you to say that those collieries could produce much more coal than you have in recent years been producing? A. If we operated every day we would produce more coal than we do; but we do not operate every day.

1959 "Q. Why do you not operate every day? A. I suppose because the Lehigh Valley does not want the coal. I do not know any other reason.

"Q. Your operations then are determined, of course, under your contract, by the amount of coal that The Lehigh Valley Coal Company tells you it will take from you? A. Yes, sir.

"Q. During the last three years has that amount of coal which The Lehigh Valley Coal Company told you it would take from you been as much as you could have

1960 produced? A. No, sir.

"Q. Can you give me the approximate difference between what you could reasonably have produced and what was taken from you? A. No; I can not.

"Q. At what time during the month does the Lehigh Coal Company notify you as to the amount of coal which they will take from you during the succeeding month? A. So far as I know, we have no formal notification for the month.

"Q. How do you get the information then? A. Up there at Hazleton we are informed that there may be a

restriction for two days in a week or three days, some- 1961
thing of that kind, and they may come from various causes. We have had of later severe restrictions on account of lack of water.

"Q. But what I wanted you to tell me was how you are notified by The Lehigh Valley Coal Company. A. That does not come to our office; therefore I do not know anything about it. Up at the mines they get so many cars. In just what form they give them that information I can not tell you."

Mr. Machen: We offer certain extracts from the 1962
annual reports of the Lehigh Valley Railroad Company, marked collectively **Government Exhibit No. 107.**

Mr. Boles: I reserve the right to object on any grounds to any or all parts of them after I get a chance to see what they are.

Mr. Machen: We offer them subject to verification by counsel for the defendants.

Mr. Boles: I will admit that they are correct copies if you say they are.

Mr. Machen: I also offer them subject to the 1963
right of counsel for the defendants to meet them by extracts from other portions of the same reports.

Mr. Machen: We offer in the same way extracts from the annual reports of the Lehigh Valley Coal Company from 1909 to 1913, inclusive, which we now offer and ask to have marked collectively **Government Exhibit No. 108.**

Mr. Gordon: I now offer as **Government Exhibit No. 109,** a statement furnished by counsel for the 1964
Lehigh Valley Coal Sales Company showing the name and location of each of the storage plants in which the stored coal transferred by the Lehigh Valley Coal Company to the Lehigh Valley Coal Sales Company under the contract of March 1st, 1912, was stored.

I also offer in evidence as **Government Exhibit No. 110** a statement furnished by counsel for the Lehigh Valley Coal Sales Company showing as to

1965 the anthracite coal both in storage and in transit which was transferred by the Lehigh Valley Coal Company to the Lehigh Valley Coal Sales Company under the contract of March 1st, 1912, the amount of each size at each storage plant and the amount of each size in transit, the statement being in gross tons.

I also offer in evidence as **Government Exhibit No. 111** a statement furnished by counsel for the Lehigh Valley Coal Sales Company showing the
1966 prices paid by the Lehigh Valley Coal Sales Company for coal so transferred under the contract of March 1st, 1912.

I now offer in evidence as **Government Exhibit No. 112**, a series of letters furnished by counsel for the Lehigh Valley Coal Sales Company showing the present arrangement under which the Lehigh Valley Coal Sales Company purchases the output of Coxe Brothers & Company, Inc., and also showing the cancellation of the 65 per cent. contracts formerly existing between those two
1967 companies prior to June 1st, 1913.

I also offer in evidence as **Government Exhibit No. 113** a statement prepared by Mr. Summers as general auditor of the Lehigh Valley Coal Sales Company, showing the average cost per ton of selling and handling anthracite coal within given dates appearing on the statement, and it is an estimated cost of selling and handling anthracite coal.

I also offer in evidence as **Government Exhibit**
1968 **No. 114**, subject to correction and verification, a statement prepared by the Government of losses incurred in the sale of coal by the Lehigh Valley Coal Company as shown in the annual reports of the Lehigh Valley Railroad Company for the fiscal years 1894, to 1902, inclusive.

Mr. Boles: Are those figures taken from a report of the Lehigh Valley Railroad Company?

Mr. Gordon: They are.

Mr. Boles: I enter an objection to the state- 1969
ment as incompetent and irrelevant in this proceeding.

Mr. Gordon: But subject to verification you enter no objection as to the manner of proof?

Mr. Boles: No objection to that.

Hearing adjourned to Friday, July 17th, 1914, at 10 o'clock A. M.

New York, July 17, 1914. 1970

Hearing resumed pursuant to adjournment.

APPEARANCES AS BEFORE.

Mr. Gordon: I would like to offer in evidence to be marked **Government Exhibit No. 116** the list of operators with whom the Lehigh Valley Coal Company had 65 per cent. contracts as given in the agreed statement of facts in the former *Reading case*, 226 U. S., 346, Volume II. page 634 of the record, which were in existence as of the 1971
date of the agreed statement of facts, December 17, 1908.

Mr. Wheaton: Subject to verification as to form and so forth.

Mr. Warren: Counsel for the Lehigh Valley Coal Sales Company have no objection to the mode of proof, and it may be that the list there enumerated is a correct one, but I am under the impression that the contracts as to the Forty-Fort Coal Company, which owns the Forty Fort colliery and the Harry E. colliery was made with the Forty Fort Company and not with the Temple Iron 1972
Company, and also that the contract as stated there made with the Temple Iron Company covering the production of the Mt. Lookout colliery was in the first instance a contract with the Mt. Lookout Coal Company and in the second instance was for only one-half of the products of the colliery. Subject to the right to ascertain these facts the offer is not objected to.

Mr. Gordon: I also offer in evidence to be marked **Government Exhibit No. 117**, the answers of the Lehigh

1973 Valley Coal Company and of Coxe Brothers & Company, Inc., to question No. 57, propounded by the Interstate Commerce Commission in I. C. C. Docket No. 4914, which question reads as follows:

"Give the following information for the month of November, 1912, concerning all the collieries and washeries whose output was taken under contract by agreement by respondent—

(a) Owners of collieries or washeries;

(b) For each company or individual named in
1974 the answer to section "a" of this question give—

1. Name of each colliery or washery owned;

2. Output in gross tons taken from each colliery or washery;

3. Brief statement giving terms of contract or agreement referred to above."

NOTE: It is agreed that by "usual 65 per cent agreement" in the answer of the Lehigh Valley Coal Company to I. C. C. question No. 57, **Government Exhibit No. 117,**
1975 is meant an agreement containing the following scale of prices:

"For all sizes above Pea coal, sixty-five (65) per cent. of the general average free on board prices of said sizes received at tide points at or near New York, between Perth Amboy and Edgewater, computed as hereinafter provided.

"For Pea coal, fifty (50) per cent. of the general average f. o. b. price for Pea coal at said tide points at or near New York when the said price is Two
1976 Dollars and Fifty cents ($2.50) per ton or less, and for each advance of ten (10) cents per ton in the said f. o. b. price above Two Dollars and Fifty cents ($2.50) the proportion paid the Seller shall be increased one (1) per cent, until the percentage paid for pea coal reaches sixty-five (65) per cent.

"For Buckwheat coal No. 1, forty (40) per cent of the general average f. o. b. price at said tide points at or near New York when the said price is Two Dollars ($2.00) per ton or less, and for each

advance of ten (10) cents per ton in the said f. o. 1977
b. price the proportionate price paid the Seller shall be increased two (2) per cent. until the said f. o. b. price reaches Two Dollars and Fifty cents ($2.50) after which the proportionate price paid the Seller shall advance one (1) per cent, for each ten (10) cents advance in the f. o. b. price above Two Dollars and Fifty cents ($2.50), as in the case of Pea coal above mentioned. Provided that nothing herein contained shall oblige the buyer to pay for Buckwheat No. 1 coal a rate higher than for Pea 1978
coal.

"For all sizes smaller than Buckwheat No. 1 the Seller shall receive Twenty-five (25) cents per ton f. o. b. railroad cars at breaker, and for each ten (10) cents increase in the general average f. o. b. price above One Dollar and Thirty cents ($1.30) a ton at tide, the price shall be increased five cents per ton; but it is understood that the Buyer shall have the option to decline to take these smaller sizes in excess of the proportion taken from the Buyer's own collieries and operations." 1979

Mr. Machen: We offer in evidence on behalf of the Government the balance sheets of the Lehigh Valley Coal Company for the years ending June 30th, 1907 to 1912, inclusive, as set out in the answer of the said corporation to I. C. C. question No. 53, in Docket No. 4914, which we herewith file, marked **Government Exhibit No. 118.**

In connection with these balance sheets we will also offer the balance sheet of the Lehigh Valley Coal Com- 1980
pany for June 30th, 1913 as set out in its annual report for that year, pages 10 and 11.

Marked **Government Exhibit No. 119.**

Mr. Machen: We offer in evidence on behalf of the Government a statement furnished by counsel for the Lehigh Valley Coal Company containing a list of coal leases in which the Lehigh Valley Coal Company is lessor, a list of coal leases in which the Lehigh Valley Coal Company is lessee, a list of coal leases under which

1981 Coxe Brothers & Company operate, a list of coal leases in which Coxe Brothers & Company, Inc., is lessor, and a list of coal leases by the New York and Middle Coal Field Railroad and Coal Company is lessor.

Marked **Government Exhibit No. 120.**

Note: It is agreed that with these statements shall be filed by the Lehigh Valley Coal Company a list of coal lands owned by it in fee, together with the date of acquisition and the name of any colliery located thereon, and also a similar statement as to the fee lands of Coxe
1982 Brothers & Company, Inc., and of the Wyoming Valley Coal Company, the whole to be treated as Exhibit No. 120 and to be received in evidence with like effect as if the facts therein stated were proven by competent testimony.

Note: It is admitted on the record that G. B. Markle Company, one of the defendants, is the successor of the former partnership of G. B. Markle & Company and succeeded to its business, assets and liabilities, including the contract with the Lehigh Valley Coal Company
1983 which has been offered in evidence by the Government, and a copy of which is filed with the petition marked Exhibit No. 1.

David G. Baird, recalled.

Direct Examination by Mr. Machen:

Q. Do you know whether any other railroad company at the present time owns any stock in the Lehigh Valley Railroad Company to any considerable amount? A.
1984 At the last list that I looked at, which is of recent date, no railroad company owned any Lehigh Valley Company stock.

Q. Has any railroad company ever owned any Lehigh Valley stock? A. Yes.

Q. What railroad companies to your recollection have owned stock in the Lehigh Valley Railroad? A. Lake Shore & Michigan Southern Railroad Company, Central Railroad Company of New Jersey, the Reading Company, although that is not a railroad company I believe.

Q. But it owns a railroad company? A. I presume so.

Q. The Erie Railroad Company? A. I think the Erie 1985
owned some and also the Delaware, Lackawanna & Western.

Q. About when were these stocks acquired, if you know, about when? A. I could not approximate that date without going to my records.

Q. Was it ten or fifteen years ago? A. Oh, yes, I should think so. As I say, I would not like to approximate the date without going to my records.

Q. Do you remember the time of the lease by the Lehigh Valley Railroad Company to the Philadelphia & 1986
Reading Railroad Company? A. Yes.

Q. About what time was that? A. 1892.

Q. The Philadelphia & Reading Railroad Company is the predecessor of the present Philadelphia & Reading Railway Company, wasn't it? A. It is a predecessor company.

Q. It operated the same railway system—not perhaps all the lines, but substantially the system? A. Yes.

Q. What became of this lease by the Reading Railroad Company to the Lehigh Valley? A. It was abro-
gated. 1987

Q. In what way and when; do you remember—in consequence of the receivership of the Philadelphia & Reading Railroad Company? A. It was abrogated in August, 1893, and brought about through the inability of the Reading Company to pay the rent called for under the terms of the lease.

Q. Do you know whether or not this lease was accomplished or followed by any agreement by the Lehigh Valley Coal Company to sell its output to the Philadelphia & Reading Coal & Iron Company? A. There was 1988
an agreement between the Lehigh Valley Coal Company and the Philadelphia & Reading Coal & Iron Company the details of which I would not like to testify to now; it is so long ago.

Q. Yes, but there was some such agreement contemporaneous or nearly so with this lease and part of the same transaction? A. There was.

Q. Do you know whether or not at about the same time the Philadelphia & Reading Railroad was leased to the Central Railroad of New Jersey? A. I do not.

1989 Q. Not even from general knowledge as to the conditions in the railway world? A. I cannot testify to that, Mr. Machen.

Mr. Machen: I offer in evidence extract from the annual report of the Philadelphia & Reading Railroad Company for the year 1892 as evidence of the facts therein stated, subject to all the exceptions which would have been available if the facts had been proved by competent testimony.

Marked **Government Exhibit No. 121.**

1990

Q. Won't you refresh your recollection as to the former holdings of the Lehigh Valley stock by other railroad companies by looking at an exhibit which was produced by you under subpoena *duces tecum* in the former case of *United States* v. *Reading Company*, reported in 226 U. S. and tell us the amount of the Lehigh Valley Railroad common stock, held on June 29th, 1907, by other railroad companies, and giving the amounts held by each? A. The amount of stock at that time held by

1991 sundry railroad companies was $12,000,000 par value.

Q. Divided up in what way? A. Central Railroad Company of New Jersey, $1,600,000; Delaware, Lackawanna & Western Railroad, $1,850,000; Erie Railroad Company, $1,850,000; Reading Company, $1,000,000; Lake Shore & Michigan Southern Railway Company, $5,700,000.

Q. What was the total common capital stock of the Lehigh Valley Railroad then outstanding? $40,334,800.

Q. And how much preferred stock? A. $106,300.

Q. Making a total of— A. $40,441,100.

1992 Q. Have the preferred stock any voting rights? A. Yes.

Q. The same voting rights as the common stock? A. Yes.

Q. Can you give us the amount of stock in the Lehigh Valley Railroad Company held by these various railroad companies on October 1st, 1908? A. From this same exhibit I can state it.

Q. Yes. A. The total amount held by the railroad companies was $7,650,000, being the same companies as be-

fore with the exception of the Erie Railroad, who at the later date held none. 1993

Q. And the Lake Shore & Michigan Southern had—give that? A. The whole interest at that later date being as follows: Central Railroad of New Jersey $1,600,000; Delaware, Lackawanna & Western Railroad $1,850,000; Reading Company, $1,000,000; Lake Shore & Michigan Southern Railway Company $3,200,000.

Q. And you say that since that time all of these companies have sold or parted with all of their interests in the stock of the Lehigh Valley Railroad Company? A. They have. 1994

Q. Do you know whether or not those various corporations acquired their interest in the stock of the Lehigh Valley Railroad Company at or about the same time? A. I could not answer that question accurately without consulting my records.

Q. Won't you look at the testimony of Mr. George F. Baer, lately deceased, as given in the former case of the *United States* v. *Reading Company*, reported in 226 U. S., as given on page 1217 of Volume 5, of the record in that case, and see whether this does not refresh your recollection as to the time of acquisition by these various railroad companies of their interest in the Lehigh Valley? A. After reading Mr. Baer's answer to a question which you have shown me it would appear from his testimony that the railroad companies acquired this stock practically at the same time. 1995

Q. It was acquired directly or indirectly from the Packer estate, wasn't it? A. I believe it was acquired indirectly.

Q. The Cross Creek Coal Company which is mentioned in the same proceeding in this case is the same corporation which is now known by the name of Coxe Brothers & Company, Inc., isn't it? A. The Cross Creek Coal Company was the predecessor in title to the present corporation of Coxe Brothers & Company, Inc. 1996

Q. It is more than that, it was the same corporation whose name was changed to Coxe Brothers & Company, wasn't it? A. I think you are right. The name was changed to Coxe Brothers & Company, Inc.

1997 Q. When you testified before I asked you as to the meaning of the letters "L. V. R. R. Secretary" at the upper right hand corner on certain letters offered in evidence and marked **Government Exhibits No. 30 and 31**, and you promised to ascertain what those letters meant; have you done so? A. I did.

Q. What do they mean? A. I gave my answer to Mr. Boles; I supposed he had given it to you. The numbers indicate my office file.

Q. They were on your files as secretary of the Lehigh
1998 Valley Railroad Company? A. They were in my office files, but whether it was in the files of the Coal Company or the Railroad Company I cannot just say offhand.

Q. It says "L. V. R. R."? A. Then that means Railroad Company.

Q. Did you ever construct a chart or diagram purporting to show the relations between the Lehigh Valley Railroad Company and all the coal companies, including the Lehigh Valley Coal Company and its various constituents and subsidiaries, in which the Lehigh Valley Railroad was directly or indirectly interested? A. I
1999 remember some years ago getting information from which a draughtsman made a certain chart showing the relations between the various coal companies that entered into the Lehigh Valley Coal Company.

Q. That was a chart which was formerly framed hanging in this room over Mr. Boles' desk? A. I wouldn't like to say that; I don't know.

Q. A white chart? A. I can only testify as to the general appearance of it. It was a blue print or, possibly more accurately speaking, a white print.

2000 Q. Since you testified before you were asked to produce a copy of this to offer in evidence in this case? A. I beg pardon; I don't think so.

Mr. Boles: Did I ask you to look up a copy of that chart?

The Witness: You did.

Mr. Boles: Did you look it up?

The Witness: I did.

Mr. Boles: Did you find any?

The Witness: I found none.

Q. Do you know of any other copy of this chart other than the one now in Mr. Boles' possession which is still in existence? A. I know of no other copy of that chart other than that Mr. Boles speaks about now. 2001

Mr. Boles: If the information shown on that chart had been requested earlier in this case I would have had our engineering department prepare a chart showing the so-called family tree of the coal companies of which the railroad owned the stock, but our engineering department assures me that they are more than overworked at the present time; they are doing a lot of work for me in this case, and that department and the accounting department have spent a great deal of time in preparing data for the government, and I have to stop in order to proceed with the defendants' case either to-day or Monday. 2002

Q. For what purpose was this chart prepared? A. So far as my memory serves for general information only.

Q. When was it prepared? A. Five or six years ago.

Q. Do you know how many copies were made at the time? A. I do not. 2003

Note: The Government offers to have photographic copies of the chart made in sufficient numbers to use in evidence in this case, and requests counsel for the Lehigh Valley Railroad Company to permit them to do so.

Mr. Boles: I most respectfully decline the offer as the chart is my personal property and it has information on it which is useful to me to my case and I am unwilling to produce it. 2004

By Mr. Boles:

Q. Mr. Baird, was that chart prepared for the same purpose as the chart which I see hanging up marked "Corporation chart Lehigh Valley Railroad and associated lines"; that is, for the private information of the officers of the company? A. It was.

Q. And did you subsequently find many inaccuracies in it? A. I found inaccuracies, quite a number.

2005 Q. And for that reason did you order what copies you knew to be in existence destroyed? A. I did.

By Mr. Machen:

Q. What inaccuracies did you find? A. I cannot remember now.

Q. What kind of inaccuracies? A. Inaccuracies that would amount to misstatements.

Q. What sort of misstatements? A. Matters of fact.

Q. What sort of facts? A. Now, if you come down
2006 to details I will have to decline, because I haven't got them before me and I cannot remember the details.

Mr. Boles: That was in 1909; that has been five years ago, Mr. Machen.

Q. Mr. Baird, you testified in the former suit of the United States of America against the Reading Company, and others, did you not? A. I have testified in several suits; I cannot particularize.

Q. I will show you a copy of your testimony and ask
2007 if you remember giving it; won't you glance over the testimony which you gave in that case, a copy of which I now show you in the printed record, so as to refresh your recollection? A. (After reading) Mr. Machen, this coincides with my testimony here.

Q. I just want you to glance over that testimony; it is only four or five pages? A. Here are the same questions here.

Q. Have you run that over? A. I have read it over.

Q. I suppose it is needless to ask whether the testimony you gave there was true or not? A. If it was
2008 true then it is true now.

Q. That is what I thought, and it was true then. You testified, of course, in accordance with what you knew then to be the facts? A. I did.

Q. Mr. Baird, let me ask you this question: you were asked in the former suit in the United States against Reading Company and others when called as a witness for the Lehigh Valley Railroad Company, and others, defendants, you were asked the following question: "I call your attention to the testimony offered by counsel

for the Government, being an extract from the annual re- 2009
port of the operations of the Philadelphia & Reading Rail-
road Company for the year ending November 30th, 1893,
in which it states in substance that a contract had been
made by the Philadelphia & Reading Railroad Company
with Coxe Brothers & Company for the transportation
over the Reading system of a large tonnage of coal from
the mines of that company to New York tide-water and
other markets, the minimum amount to be furnished for
transportation to New York tide-water to be 1,000,000
tons. It goes on to state that in order to transport that 2010
coal under that contract the Reading had built a railroad
ten miles in length to connect its line with those of the
Delaware, Susquehanna & Schuylkill, controlled by Coxe
Brothers & Co. Do you remember anything about that
contract between the Reading and the Coxes and the con-
struction of that line?" And your answer to that ques-
tion was "I remember in a general way that there was
a contract entered into between the Coxes and the Read-
ing by which the Reading built a branch road up to a
connection with the Delaware, Susquehanna & Schuyl-
kill Railroad." Is that correct? A. That is correct. 2011

Q. Then you were further asked the following ques-
tion by Mr. Platt—who was he counsel for?"

Mr. Boles: He was counsel for the Lehigh Val-
ley Railroad in that old Reading case.

Q. "I call your attention to a further statement from
that Reading report of 1893, which states that that con-
tract referred to in the last question was not being car-
ried out, and that in consequence of a disagreement the
transportation of the Coxe Brothers' coal and the Dela- 2012
ware, Susquehanna & Schuylkill coal had been almost
entirely lost to the Reading Company. Do you know
where the Coxe coal went, over what line it passed, after
that occurrence?" and you said then, "Yes, sir." You
knew at that time? A. I probably did.

Q. And you were asked further "Where did it go?"
and you answered "On the lines of the Lehigh Valley
Railroad." A. I presume I knew at that time and could

2013 answer the question; at this time I cannot owing to the lapse of time.

Q. You were further asked the following question by Mr. Platt: "It was connected up with the Lehigh Valley, as you stated, at Lumber Yard or Stockton, and from that time passed principally over the lines of the Lehigh Valley Railroad?" and you answer, "Yes, sir." Don't you remember that to be a fact? A. If I stated it as a fact at that time it was a fact.

Q. But you further testified that that arrangement
2014 continued up to the present time, which was in 1908 or 1909 when this testimony was being taken. Then you were further asked the following question: "Do you know why the Lehigh Valley Railroad Company bought the stock interests in the D. S. & S. and Coxe Brothers & Company in 1905?" and you answered, "They purchased it undoubtedly for the purpose of assuring the tonnage of the Coxe Lines to the Lehigh Valley system." Does that accord with your recollection or, rather, is that testimony correct, or was it correct then? A. In the light that I had at that time I should say it was correct.

2015 Q. You were further asked by Mr. Platt: "To prevent the possibility of its going to the Pennsylvania Railroad or some other railroad?" And you answered, "Yes, sir." A. I have no doubt that is correct.

Q. Won't you look at your testimony as reported on pages 780 to 783 on the re-direct examination as a witness for the defendants in this old Reading case, and more particularly as to the reasons for the acquisation by the Lehigh Valley Railroad Company of the stock of the Seneca Coal Company and certain other coal
2016 stocks, and state whether or not that testimony was correct, or perhaps the best way would be—I will change that—I will ask you to look at your testimony in the former case beginning with the question "Do you know why the Lehigh Valley Railroad Company bought the stock interests in the D. S. & S. and Coxe Brothers & Company in 1905, and read the remainder of your examination from that point down to the close of the re-direct examination? A. (Reading). "Q. Do you know why the Lehigh Valley Railroad Company bought the

stock interests in the D. S. & S. and Coxe Brothers and 2017
Company in 1905? A. They purchased it undoubtedly for the purpose of assuring the tonnage of the Coxe mines to the Lehigh Valley System.

"Q. To prevent the possibility of its going to the Pennsylvania Railroad or some other railroad? A. Yes, sir.

"Q. You spoke yesterday on cross- examination of the Lehigh Valley having acquired the Seneca Coal Company, Connell Coal Company, and certain other coal companies within recent years, and having turned them 2018
over to the Lehigh Valley Coal Company. Did you mean that the Lehigh Valley Railroad had acquired the property or had acquired the stock of those companies? A. I meant to say that the Lehigh Valley Railroad Company acquired the capital stock of the respective companies named.

"Q. Did the Lehigh Valley Railroad Company buy any coal lands or coal property? A. From these companies?

"Q. From these companies, yes. A. No, sir.

"Q. But only bought stock in the companies? A. Yes, sir. 2019

"Q. And transferred that stock afterwards—disposed of it—to the Lehigh Valley Coal Company? A. Yes, sir.

"Q. For what purpose were the stocks of those coal companies bought? A. To assure the tonnage from the mines on the various properties to the Lehigh Valley system.

"Q. And to prevent its going to some other railroad? A. Yes, sir.

"Q. Has there been during the past years, and since the reorganization of the railroads, competition between 2020
the railroad companies for the coal tonnage in the anthracite coal regions? A. Yes, sir.

"Q. Is that the reason why the Lehigh Valley Railroad Company had acquired interests in the stocks of coal companies? A. Yes, sir.

"Q. If the coal stocks which have been acquired by the Lehigh Valley Railroad Company had not been acquired by it would it, in your judgment, have been possible for the Lehigh Valley Railroad to have continued as an operating railroad corporation? A. No, sir.

2021 "Q. Why not? A. It would have lost all the valuable coal tonnage.

"Q. You mean it would have gone to competing railroads? A. It would have gone elsewhere to competing railroads.

"Q. Take, for instance, the Seneca Coal Company, which is one of the companies mentioned yesterday, and the stock of which was acquired by the Lehigh Valley Coal Company in 1900. Where was that located? A. In the Lackawanna Valley near Pittston.

2022 "Q. Near the lines of the Lehigh Valley Railroad? A. Yes, sir.

"Q. Was it at the time of the purchase, its whole output, tributary to the Lehigh Valley? A. I think so.

"Q. Was there at that time danger that that coal or some of it would go to some other railroad? A. I think so.

"Q. When I say 'go to some other railroad' I mean the tonnage pass over the lines of some other railroad? A. Yes, sir.

"Q. What other railroad? A. The Lackawanna.

2023 "Q. And is that situation true either as to the Lackawanna or some other competing road as to the rest of these coal companies that you mentioned yesterday? A. I think it is.

"Q. When I say 'mentioned yesterday' I mean about which you were asked by Mr. McReynolds yesterday on cross-examination? A. Yes, sir.

"Re-Cross Examination by Mr. McReynolds:

"Q. You have just said that but for the purchase by
2024 the Lehigh Valley Railroad Company of the sundry coal companies which it has acquired from time to time that its tonnage of hard coal, in your opinion, would have gone to other roads. Are there other railroads which compete with the Lehigh Valley for the coal tonnage? A. Yes, sir.

"Q. What are those roads? A. Philadelphia and Reading Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna and

Western Railroad Company, the Delaware and Hudson 2025
Company, the Pennsylvania Railroad Company.

"Q. How about the Erie? A. That is also a competing line.

"Q. All those roads now are competing for the hard coal traffic? A. I believe so.

"Q. And they all carry coals from the coal regions in Pennsylvania into other States? A. Yes, sir.

"Q. Which is the most active competitor which the Lehigh Valley Railroad has? A. That would be a hard question to answer from my standpoint.

"Q. There are all active competitors? A. They are 2026
all active competiitors.

"Q. Each one of them is seeking the coals to take over its own lines to tide-water here at New York or other points in other States? A. Yes, sir.

"Q. How long has that condition been existing in the coal regions? A. I think it has been existing since 1867 or 1868.

"Q. And in order to gather to itself the control over the traffic lying in close proximity to those lines you think the Lehigh Valley Railroad Company purchased 2027
these various coal companies? A. Yes, sir.

"Q. Which enables them to ensure the passing of that coal over its line? A. Yes, sir.

"Q. How does it enable it to do it? A. By control; stock ownership.

"Q. What do you mean by 'control'? Do you mean that the Lehigh Valley Railroad because that stock ownership is able to dictate to these companies what lines their coal shall pass over? A. Yes, sir.

"Q. There is no difficulty about that condition, is 2028
there? A. I do not think so."

Q. Is that correct? A. The testimony is correct, but I would like to emphasize the fact that the purchase of these stocks was more in the line of keeping on to the Lehigh Valley—retaining in the Lehigh Valley—the tonnage that is already possessed.

Q. Now, one other question. You have on your wall a map of the coal areas, haven't you, in your office in Philadelphia? A. Yes.

2029 Q. A relief map? A. A relief map, yes, sir.

Q. By whom was that prepared? A. By Mr. Edward B. Hardin.

Q. Who is he? A. If my memory serves he was some years ago connected with the Geological Survey of the Commonwealth of the State of Pennsylvania.

Q. It is the same map of the Geological Survey which is the basis of this so-called Ruley map, isn't it, the same scale as the Ruley map? A. I believe that map hanging on the wall of my office is a correct scale with the
2030 original map put out by the Geological Survey, and I believe is the basis of the so-called Ruley map.

Q. Were the colored areas of the coal lands which are indicated on this map on it when it was originally prepared by Mr. Hardin, or was it put on by somebody else? A. The map was purchased from Mr. Hardin and the colored areas were on the map when we purchased it.

Q. When did you purchase it, sometime after the map is dated, or shortly after that map is dated? A. Oh, yes; it would certainly be after the map was dated.

Q. And it has been in your office ever since? A. Prac-
2031 tically so. It was out of my office for a brief period.

Q. When? A. I cannot tell; it was used as an exhibit by the Lehigh Valley Coal Company at one of the expositions—the National Exposition at Chicago or St. Louis, I can't remember—it was loaned for a time and came back badly damaged.

Q. It is a relief map, isn't it? A. It is a relief map.

Re-Cross Examination by Mr. Boles:

Q. Mr. Baird, was the Lehigh Valley Railroad Com-
2032 pany just coming out of a period of very bad financial condition about 1905? A. Yes, sir.

Q. And how had it, I might say, resurrected itself after the period of depression it went through? A. I don't know how to answer that question; there are so many things that contributed to its resurrection.

Q. Was the principal thing the execution of the general consolidated mortgage? A. The operation——

Mr. Machen: Note an objection, please, as irrelevant and not proper cross-examination.

A. The provisions under the general consolidated 2033
mortgage made it possible for the company to finance with a great deal more ease than it had been able to theretofore under the previous mortgage.

Q. Now, if at about that time and in the succeeding year the Lehigh Valley had lost a large portion of the anthracite tonnage which had prior to that time been moving over that road what would have been the effect of the financial condition of the company?

Mr. Machen: Objected to for the same reason.

Mr. Boles: I ought to say in answer to your 2034
objection that you raised the point why we purchased Coxe Brothers and the Seneca Coal Company and others, and I am trying to tell you, trying to show why among other reasons.

A. It would have had a very material effect on it.

Mr. Machen: It may appear that my objection is not well founded, but I did not see the relevancy of it at the moment.

2035

Q. Considering the proportion which anthracite traffic bore to the total traffic of the road, was the anthracite traffic vital to the company at that time? A. It was and is.

Q. For how long a period prior to 1904 had the Lehigh Valley Railroad been in financial straits? A. Ever since the year it emerged from the Reading lease, practically.

Q. 1893? A. 1893.

Q. And it had paid no dividends during that period? A. It paid no dividends from July, 1892, until 1904 or 2036
'05. And it did have some difficulty even in meeting the interest on its bonded indebtedness? A. It did.

Q. And did it come near falling over the brink and getting into the hands of a receiver? A. Those were anxious times and a very little circumstance might have thrown the company into the hands of a receiver most any time.

Q. As to the map on your wall, who does that belong to? A. That belongs to the Lehigh Valley Railroad Company.

2037 Q. Did you permit the Government to make a photograph of it? A. Some lithographers—at the request of counsel for the Government—came to my office, but did not take a photograph of it. They made a tracing on some transparent substance from which they afterwards constructed a lithographic map and subsequently to that added some coloring.

By Mr. Machen:

Q. One question I want to ask you. At the time of the purchase by the Lehigh Valley Railroad of Coxe
2038 Brothers & Company the coal from their mines was transported by the Delaware, Susquehanna & Schuylkill Railroad and not by the Lehigh Valley, wasn't that so? A. It reached the market over the lines of the Lehigh Valley Railroad Company.

Q. And all the Lehigh Valley got was the trackage payment which the Delaware, Susquehanna & Schuylkill paid the Lehigh Valley in consideration for permission to haul the coal in connection with the Lehigh Valley to tidewater? A. As to the details of the trackage
2039 contract I cannot testify now accurately, but the tonnage reached the market over the lines of the Lehigh Valley Railroad.

Q. But was not hauled by the Lehigh Valley? A. I am not sure.

RECESS TAKEN UNTIL TWO O'CLOCK P. M.

George W. Storck, called on behalf of the petitioner,
2040 being first duly sworn, testified as follows:

Direct Examination by Mr. Machen:

Q. Will you please state you name, residence and occupation? A. Name, George W. Storck, occupation expert bank accountant, of the Department of Justice.

Q. Won't you please give us a brief resume of your experience as an accountant? A. Twenty-two years certified public accountant, a Fellow of the American Association of Accountants and Chartered Accountant.

Q. How long have you been connected with the bureau 2041
of investigation? A. Since its formation.

Q. When was that? A. That was about five years ago.

Q. Have you compared the table found on page 31 of the bill of complaint? A. Yes.

Q. Purporting to show the dividends paid by Coxe Brothers & Company and the interest on the purchase price? A. Yes; I compared that.

Q. Is the interest column calculated accurately? A. It is, sir.

Q. Have you verified the figures found in the column 2042
of dividends, and if so, have you found them correct? A. Yes, I verified them and they are correct.

Q. Are they absolutely correct? A. No, sir, not absolutely. In the year 1906 the dividends paid by Coxe Brothers & Company, incorporated, amounting to $531,321.81 is incorrect.

Q. What did you verify these figures with? A. With answer to Question 50 of the Interstate Commerce Commission's answers to questions.

Q. With anything else? A. No, sir. Oh, I beg your 2043
pardon; with Government Exhibit No. 39.

Q. What does Government Exhibit No. 39 show, income of Coxe Brothers & Company? A. Yes, and dividends paid on their net income.

Q. Are the figures for all of these years found in answer to question No. 50 of the I. C. C.? A. All for the year 1913.

Q. Have you verified the figures for 1913? A. Yes, sir.

Q. Are they correct? A. That is correct; yes, sir. No, 2044
they are not correct. It is $586,866.55.

Q. Instead of $385,561.49? A. Instead of $385,561.49.

Q. Have you verified the figures for 1906? A. Yes. That is verified with Government Exhibit No. 39.

Q. I think you are mistaken about that. Government Exhibit No. 39 gives the income account for 8 months only. A. Well, the figures in Exhibit No. 39 are $357,215.15. I think it is eight months.

Q. And these are given for the entire year? A. Yes.

2045 Q. And do they or not check with the figures as given for the entire year in the answer to I. C. C. question Number 50? A. Yes, they agree.

Q. The figures with which you have compared these figures in this column, give the entire net income, do they, of Coxe Brothers & Company, Incorporated, for these several years? A. Yes.

Q. And with the exception of 1913, they tally? A. That is correct.

Q. How much difference? A. 1913?

2046 Q. Yes. A. $201,405.07.

Q. So that the total difference between the interest on $17,444,000 at four per cent. and the net income of Coxe Brothers & Company during those years instead of being $2,777,800.10 should be less by—— A. $201,000 plus interest.

Q. Have you verified the table found on page 35 of the petition? A. Yes, sir.

Q. That is to say, what figures in that table have you verified? A. The production in the second column.

Q. Have you verified that from information derived
2047 from reports of the Pennsylvania Department of Mines? A. Yes.

Q. What did you find? A. The figures are correct, with the exception of one item here.

Q. What is that? A. The second item, Midvalley Coal Company.

Q. What should that be? A. 446,629 tons, instead of 466,629 tons.

Q. Have you verified the table at the bottom of page 55 of the petition? A. Yes, sir.

2048 Q. Do you find that correct? A. That is correct.

Q. What does that last mentioned table purport to show? A. It shows the average price received for the coal and the average cost price 65%, the amount left for freight, freight rates, approximate cost of selling and wastage and loss per ton.

Q. With what did you verify the average price f. o. b. Perth Amboy with the Lehigh Valley Coal Company? A. With Ruley's report.

Q. You referred to the Government report as what? A. One of these books here.

Q. Look at this volume and state whether that is the source of your information? (Showing witness Volume 3 of the record in the case of *The United States against Reading Company*, Reported in 226 U. S., 324.) A. Yes. 2049

Q. Which was the table prepared by the Bureau of Anthracite Coal Statistics? A. Yes.

Q. Did you from the same source verify the cost price as given in the second line of this table, amounting to $2.88? A. Yes.

Q. And did you verify the approximate expense of selling and the approximate wastage? A. Well, that is an arbitrary price that was taken. 2050

Q. You simply assumed that? A. Yes.

Q. But assuming them the mathematics are correct? A. Correct.

Q. Have you verified the table of interest paid by the Lehigh Valley Railroad Company on certain bonds of the Coal Company shown on page 39 of the Petition? A. Yes.

Q. With what have you compared those figures there given? A. In the answer to Question No. 50, Sheet 1, Note 3, Docket Number 4914. 2051

Q. Have you examined the two tables found on page 40 of the petition showing first the amount of advances by the Lehigh Valley Railroad to the Lehigh Valley Coal Company and second, the amount paid by the Coal Company to the Railroad Company? A. Yes.

Q. What did you check these with? A. First with the answer to Question No. 21, and Government Exhibit No. 50 in this case.

Q. Government Exhibit No. 50 is the answer to Question Number 21? A. Yes. 2052

Q. Did you find the tables correct or incorrect? A. They are correct.

A. Absolutely? A. Yes.

Q. Turning to page 41 of the petition, have you examined and verified the table there found as to the amount charged to profit and loss or income by the Lehigh Valley Railroad? A. Yes.

Q. Is that table correct? A. No, sir; it is not.

2053 Q. In what respect is it incorrect? What did you verify that by? A. In connection with the answer to Question No. 21.

Q. Government Exhibit No. 50 in this case then? A. Yes. It is incorrect by $11,450.00.

Q. Where does that come in? A. That is occasioned by charging profit and loss with $5,725.00 instead of crediting it.

Q. The figure $5,725.00 under the head of the year 1899, should have been credited instead of debited? A.
2054 Instead of charged, yes.

Q. So that there is an error there of about $11,000? A. Yes, it would change the total to read $5,743,649.98 instead of $5,755,099.98.

Q. What does that represent? Amounts—— A. Amounts charged to income and profit and loss.

Q. Amounts of what advances?

Mr. Boles: I object to the question as calling for a conclusion.

2055 A. It does not show it. Amounts charged off. That is all I know. I think I can tell you that though from one of my sheets. (After examining papers.) It is the difference between advances and re-payments. It was charged off to profit and loss, and income.

Q. Not the entire difference, was it? A. No, sir, partly.

Q. In other words, it is the amount of the advances which were charged off? A. Yes, sir.

Q. Either to profit and loss or income? A. Or income.

2056 Q. Do you know whether this column of amounts charged off on page 41, includes interest paid by the railroad, as guarantor on coal company's bonds? A. Yes, it does.

Q. Where do you get that information from? A. I haven't any note of where I got that from.

Q. I call your attention to a foot note to Government Exhibit No. 50, and ask you whether that was the source of your information? A. (After examining paper.) A. Yes, sir.

Q. Have you examined and verified the total interest 2057
waived by the Lehigh Valley Railroad Company on Coal Company bonds held by it as set forth on page 42 of the petition in this case?

Mr. Boles: I object to the question.

A. Yes, sir.

Q. With what did you verify these figures found in this table? A. Answer to Question Number 50, Sheet 2, Interstate Commission Docket No. 4914.

Q. What did you find? A. I found the figures to be 2058
correct.

Q. Please look at page 42 of the petition where it is stated that the book value of the balance due by the Lehigh Valley Coal Company to the Lehigh Valley Railroad Company on open account averaged not less than $1,500,000 every year from 1893 to 1901; have you verified that statement? A. I have, but it is not correct.

Q. What should the figures be? A. Over $2,000,000. I have the exact figures here. The average balance there $2,081,672.27.

Q. In other words, the book value of the balance due 2059
was under-stated? A. Yes.

Q. Mr. Storck, it appears in the evidence in this case that in the year 1908, the Lehigh Valley Railroad Company which held $1,400,000 of five per cent. bonds of the Lehigh Valley Coal Company due 1933 assented to a reduction of the rate of interest payable thereon from five to four per cent. per annum and in consideration of that reduction received at most, the sum of $98,000; it is also in evidence that the bonds on which the interest was so reduced, having been guaranteed as to principal 2060
and interest by the Railroad Company, were immediately afterwards sold by the Railroad Company at 95%, or $1,330,000. Now, can you tell us as a matter of mathematics how much the coal company gained on that transaction?

Mr. Boles: I object to the question.

Mr. Wheaton: I also object as assuming something not proven.

Mr. Boles: That was the ground of my objection.

2061 Q. Answer the question, Mr. Storck. A. It showed a loss in discount of $233,282.00, allowing for $98,000.00 there would be a difference in discount of $135,288.00.

Q. Explain a little more fully what you mean by this answer. A. Fourteen hundred four per cent bonds being sold at $950, the value of a five per cent bond having 28 years to run under the same conditions and so forth, would be $1,116.63; multiplied by fourteen hundred would represent $1,563,282.00. Four per cent bonds being sold at $950.00 would amount to $1,330.00;
2062 the difference between the two would be $233,282.00.

Q. Have you made a table showing the difference between these—or, rather, have you calculated the difference between the interest actually and finally paid on the $10,587.00 certificate of indebtedness of the Lehigh Valley Coal Company issued to the Railroad Company in 1905, namely, simple interest at four per cent per annum, at the end of six and two-third years and interest at the legal rate during the same period at six per cent?

2063 Mr. Boles: I object to the question as irrelevant.

A. Yes, sir.

Q. What is the difference? A. The interest actually paid at four per cent amounted to $2,578,880; the interest at five per cent compounded for six and two-third years——

Q. That was not the question I asked you. I asked first the question what was the interest at six per cent, simple interest, at six per cent for six and two-third
2064 years. A. The interest for six and two-third years at six per cent amounted to $4,214,800.00.

Q. What is the difference between the two? A. $1,635,920.

Q. Now, have you also calculated what interest at five per cent payable annually and compounded on the arrearages would amount to for the same period of time? A. That would amount to $4,054,274.00.

Q. What would be the difference between this figure and the interest actually paid in 1912 by the Coal Company? A. $1,475,394.00.

Q. Have you at my request, prepared a table showing a summary of some of the financial preferences given by the Lehigh Valley Railroad Company to the Coal Company as proved by the evidence in this case? 2065

Mr. Boles: I object to the question.

Mr. Wheaton: I also object to the question for the reason of the assumption contained in the question.

A. Yes.

Q. Let me have it. A. (Witness produces paper.) 2066

Q. Please look at the paper which I now show you, and offer in evidence marked **Government Exhibit No. 122**, and state what it is? A. A summary showing the approximate money values of certain preferences given to the Lehigh Valley Coal Company by the Lehigh Valley Railroad Company since 1892.

Mr. Boles: I object to the explanation of the paper.

Mr. Wheaton: I also object to it on the ground of a conclusion by the witness. He appears here merely as an expert accountant, and by this answer tries to state a conclusion. 2067

Q. Please state from what data and how you prepared this table.

Mr. Wheaton: From 1892 to when? To what date does it go?

The Witness: March 1, 1914.

A. The first item there of $5,743,649.19 is taken from page 41 of the petition. 2068

Q. Being one of the figures which you have already verified? A. I have already testified to and verified.

Q. Go on. A. The next is the calculation of interest on June 30th, 1894, being the balance due of the advances to March 1st, 1914; those figures are my calculations. I have taken the average from June 30th, 1895, down to 1903.

Q. That is to say, this is a calculation of figures as to which you have already testified? A. Yes.

2069 Mr. Wheaton: Is that simple or compound interest?

The Witness: Simple.

A. (Continuing) The third item, amounting to $666,666.00, is taken from page 42, figures already testified to by me.

Q. What is the fourth item, or, rather, how is it calculated? A. The fourth item is in the interest calculated on the above.

2070 Q. That is a mere matter of arithmetic? A. Calculation. The next item, amounting to $832,668.91, is on page 42, where it shows the book balance averaged not less than one million and a half every year from 1893 to 1901; it says five per cent simple interest on that sum——

Q. That $1,500,000 you testified to a moment ago. A. As two million.

Q. It should have been larger? A. Yes, the interest should have been $832,000.

Q. That is what it is in your table? A. Yes. You
2071 have a different principal to figure on here in the computation.

Q. Whereabouts in the computation? A. Page 42. It would amount to that on the million, and on a payment of the million and something the interest is increased.

Q. Where are the remaining figures taken from? A. The next figure is interest calculated on that figure of $832,000.

Mr. Wheaton: It is interest on interest, isn't it?

2072 The Witness: Yes, interest on interest.

Q. What do you mean by that? A. I mean that from the time it was due, that $832,000, and brought it down to March 1st, 1913. The next item, $1,475,800——

Q. To go back a moment to the fifth item, namely, $832,668.91, at what rate was that interest calculated—the interest waived by the railroad company on the open book balance? A. Five per cent.

Q. Now, go on with the remaining items and tell us 2073
where you got them from? A. I have testified that that is the difference between compound interest, that is, $1,475,394, and the interest actually paid.

Q. And the next item is mere calculation? A. The next item is.

Mr. Wheaton: The next item cannot be a mere calculation, can it?

The Witness: It is a calculation on that same thing from March 1st, 1912, to March 1st, 1914.

2074

Q. Have you gone over them all? A. All but that $135,000, but I have already testified to that.

Q. Is this table exhaustive? A. No, sir, it is not. It is only for certain items. I have not gone all through everything.

Q. Have you caused to be prepared from the list of stockholders of the Lehigh Valley Railroad or the Lehigh Valley Coal Sales Company, which were furnished by counsel for the said companies respectively, a table showing the 50 largest stockholders in the Coal Sales 2075
Company and also the number of shares held by each of them in the railroad company? A. Yes, sir.

It is agreed that the list of stockholders in the Lehigh Valley Coal Sales Company as of April 9th, 1914, and the list of stockholders of the Lehigh Valley Railroad Company as of April 11th, 1914, shall be offered in evidence but shall not be copied or printed in the record in this case, but that such tabulation therefrom as may be offered by either side shall be properly verified and ad- 2076
mitted in lieu thereof.

Q. Please look at the table which I now show you and state whether this is the table you have mentioned? A. That is the table; yes, sir.

Mr. Machen: I now offer this document in evidence; marked **Government Exhibit No. 123.**

2077 Q. How many shares of common stock in the Railroad Company were held by these 50 largest stockholders? A. By the fifty, 431,722.

Q. How many shares of stock in the Coal Sales Company did these same 50 men hold? A. 47,182 shares.

Q. How many shares of stock were outstanding in the Coal Sales Company at that time? A. 150,850.

Q. And how many shares were outstanding in the railroad Company? A. 1,210,034 shares.

Q. Does that refer to shares of common stock, or to
2078 shares of both preferred and common as to the Railroad Company? A. Common stock.

Q. How many shares of preferred stock of the railroad Company were outstanding at this time? A. 2,126 shares.

Q. So that would not substantially change the figures in any respect? A. No, sir.

Q. How many shares of common stock in the Railroad Company were held by the five largest shareholders on this date? A. 143,400 shares.

2079 Q. And how many shares in the Coal Sales Company were held by the same people? A. 22,497.

Q. Can you state how many shareholders there were in the Railroad Company, or how many holders of common stock in the Railroad Company, there were on this date, April 11th, 1914? A. In the Coal Sales Company?

Q. I asked you the Railroad Company; I don't believe you have that. The Coal Sales Company, how many stockholders were there in the Coal Sales Company on April 9th, 1914? A. 3583 shareholders in the Coal Sales Company, and of these I believe all except 490 were
2080 stockholders in the Railroad Company.

Q. All except 490 were stockholders in the Railroad Company? A. Yes, sir.

Q. How many shares of stock in the Coal Sales Company were held by persons who were also stockholders in the Railroad Company? A. 122,924 shares; that is, on April 9th, 1911.

Q. In making this table have you treated as separate stockholders held by the persons having the same names and same addresses? A. They were not considered.

Q. How do you mean were not considered? A. I did 2081
not take them into consideration in making up this table.

Q. Did you treat them as separate people? A. Yes, sir.

Q. That is to say, if John Smith, residing at 125 B street holds 10,000 shares and Mary Smith residing at the same place holds a thousand shares, you treated them as two separate people? A. Yes, sir.

Q. And don't make any attempt to inquire as to the relationship or anything of that sort? A. No, sir.

Q. Were there a number of such cases? A. There were. 2082

Q. Please look at the table which I now hand you, and state what it is. A. That is a table showing the result of 65 per cent. contracts of the Lehigh Valley Coal Company.

Mr. Wheaton: I object to the question. I do not object to his showing any figures relative to those contracts, but I do object to your asking this witness for a conclusion, as volunteering a conclusion on the part of the witness.

2083

Q. Was this table prepared by you? A. It was.

Q. From what data was it prepared? A. Volume 3 of the **Reading case.**

Q. What do you mean by "Volume 3 of the **Reading case**"? A. That is what it shows here, Volume 3, a transcript of the record, Government Exhibit No. 11.

Mr. Warren: Of that record?

The Witness: Not of this record.

Mr. Machen: We offer in evidence, marked **Government Exhibit Nos. 124 and 125, 124** being 2084
a table showing the prices f. o. b. New York harbor, received by the Lehigh Valley Coal Company for the year 1907 on anthracite coal from each of the three trade regions; **125** being the general average f. o. b. prices realized for anthracite coal sold at or near New York during the year 1907. The tables are portions of Government Exhibits Nos. 15 and 11 in the case of the United States against the Reading Company, reported in

2085 226 U. S., and we offer these tables of statistics in evidence subject to verification by the defendant.

Mr. Wheaton: I object to them as incompetent, immaterial, misleading.

Mr. Machen: If there is any objection as to the authenticity of the statements shown in these tables, **Government Exhibit Nos. 124 and 125**, as distinct from their relevancy, if duly proven, I would like to reserve the right on behalf of the Government to recall Mr. Armstrong to verify them.

2086 Mr. Machen: We also offer in evidence with the same a table purporting to show the results of the 65 per cent. contracts of the Lehigh Valley Coal Company in 1907 in respect of coal shipped from the Wyoming region by the Lehigh Valley Railroad to Perth Amboy, New York Harbor, f. o. b. vessel.

Marked **Government Exhibit No. 126.**

Mr. Wheaton: I repeat my objections to that; that it is asking the witness to produce something

2087 which apparently shows—I don't object to figures or calculations, but I object to the witness personally or by calculations prepared by him attempting to show what are said to be results which are mere conclusions of the witness. I may add to that that the witness has already admitted in this same connection that he assumes the expense of selling and wastage which are portions of figures which enter into this tabulation.

Mr. Warren: I object to this as entirely incom-

2088 petent and tending to show nothing that will avail the Government as actualities in connection with the 65 per cent. contracts.

Q. Please state from what source you derived the basic figures set forth in this table, **Government Exhibits Nos. 126, 127.** A. From **Exhibits 124 and 125** and from those transcripts.

Q. That is to say, the average price received at Perth Amboy f. o. b. Perth Amboy, was derived from the Government Exhibit—A 123 and 125.

Q. The average prices received by the Lehigh Valley Coal Company are derived from Government Exhibit No. 124, aren't they? A. Yes, 124. 2089

Q. Now, from what source did you derive the figures in the second column, namely, cost price? A. From Exhibit No. 125.

Q. Did you require calculation from that exhibit? A. Yes, every one of those.

Q. How did you calculate it? A. By taking this price of 65 per cent. on where it was 65 per cent. stuff.

Q. Does the foot note attached to **Exhibit No. 126** show the method by which the figures shown in the second column were obtained? A. Yes, it does. 2090

Q. How did you derive the figures set out in the third column, namely the expense of selling and wastage; did you assume those? A. Those were assumed.

Q. How did you get the amount left for freight? A. It is the difference between the cost price, the expense of selling and wastage deducted from the average price received.

Q. That is, the figures in the fifth column, being the amount left for freight, or difference between the figures in the fourth column, are the average prices received at Perth Amboy f. o. b. by the Lehigh Valley Coal Sales Company, and the sum of the figures in the second, third and fourth column, that is to say cost price, expense of selling and wastage? A. That is correct. 2091

Q. And the rest is a matter of calculation, is it? A. That is all, yes.

Q. It is correct? A. It is correct.

Q. The calculations are correct assuming the data? A. Yes, sir.

Q. The arithmetic is correct? A. It is. 2092

Q. Have you compiled a table showing the production of anthracite coal in the calendar years 1910, 1911 and 1912, and the proportions or amounts mined by the chief operators? A. Yes.

Q. Please look at the paper which I now hand you, and state whether it is the compilation which you have referred to? A. Yes, it is.

Mr. Machen: We offer this paper in evidence.
Marked **Government Exhibit No. 127.**

2093 Q. Will you state from what source these were prepared? A. Yes, from the report of the Department of Mines for the years 1910, 1911 and 1912.

Q. What Department of Mines? A. Of Pennsylvania.

Q. State in more detail how you compiled the figures? A. By taking the indexes of the companies, and going through each and every company.

Q. Taking the index of each producing company, you mean? A. Yes.

2094 Q. That is to say, each coal company? A. Each coal company.

Q. Are these figures as given here correct? A. They are.

Q. They are in accordance that is to say, with the figures stated— A. In the book.

Q. Are these figures which you have given in your table found in any one or one place in the report of the Department of Mines? A. It is right through the book.

Q. And you had to add them up from the various places in the book, to produce the figures or arrive at

2095 the figures which you have given under the head of out-output in gross tons in this **Exhibit No. 127**? A. Yes, sir.

Q. Do the figures which you have given in your tables as to total production of railroad systems comprise the productions by the various companies you have testified as railroad coal companies? A. Yes.

Q. Are the percentages as given in this exhibit found in the report of the Department of Mines, or have they been compiled by yourself? A. Those are my calcula-

2096 tions.

Cross-Examination by Mr. Wheaton:

Q. This tabulation, Mr. Storck, starts out with the expression "Output by the Railroad Companies." A. Yes.

Mr. Machen: By the Railroad Coal Companies.

Q. Did you find them in the report? A. No, sir.

Q. That is your own invention? A. That is my own title for it.

Q. That you made up yourself? A. Yes, sir. 2097

Q. Under that you have the Reading Company; do you find that? A. Not under Reading Company.

Q. Did you find in any of these reports of the Mines Bureau of Pennsylvania that the Reading Company produced any coal? A. No.

Q. Under that you have the Lehigh Valley Railroad Company. A. The same thing.

Q. That is your own make up? A. Yes, sir.

Q. You don't find anything like that in the report that you got this tabulation from? A. No. 2098

Q. And just the same way all the way down? A. All the way through there. That is, down as far as——

Q. Every railroad company that you have mentioned in the tabulation together with the appellation or title "Total production of railroad systems," that is your own makeup? A. Yes.

Q. Your own conclusion? A. All right; I made it up, yes.

Q. You don't find that in any of the reports? A. No, that is not in the report.

2099

Mr. Wheaton: Now I desire to note an objection to the admission of this in evidence on the ground that on the face of it it contains what purports to be statements derived from no authentic source at all, but simply conclusions made up and put upon these papers by the witness on the stand without any knowledge being shown on his part as to the truth of any of the things involved in these conclusions of his, and in direct opposition, so far as the Lehigh Valley Railroad Company is concerned, with the positive testimony of witnesses produced by the Government in this very case, and that these papers until corrected in that respect are incompetent and misleading and manufactured evidence, made out of whole cloth, injected improperly, or attempted to be injected improperly into this case. 2100

2101 Cross-Examination by Mr. Warren:

Q. Did you find, Mr. Storck, any mine inspector's report for the years 1910, 1911 and 1912 in the production of the coal by the Temple Iron Company? A. Under the name Temple Iron Company, yes, 907,408 tons.

Q. Let us see it? A. I cannot; it is not in one figure.

Q. Now, isn't it a fact, Mr. Storck, that you found in those years—a report of those years of production, that the Sterrick Creek, Lackawanna and Northwest, which seem to be the only companies you have named
2102 here, those three companies, and having been informed that the stocks of those companies were owned by the Temple Company, you assembled them under the head of Temple Company, isn't that the fact? A. Is what the fact?

Q. Just what I have asked you; that you found reports of the mine inspectors of Pennsylvania for those three years' production of anthracite coal from the three companies which you have named on this alleged tabulation, Sterrick Creek Coal Company— A. Not three.

2103 Q. All right; I will say three to start with. You found three, Sterrick Creek, Lackawanna and Northwest, didn't you? A. Yes.

Q. You incorporated them in the Temple Iron Company, did you not, on that tabulation? A. Yes, sir.

Q. You did not find them in any book, did you? A. No.

Q. And that you have assumed? A. Yes, sir.

Q. Didn't you find it for 1911? A. Wherever you see the Temple Iron Company, the same thing applies.

2104 Q. But the point I want to ask you to get clear in your mind is this, that in the Bureau's Report for the year there are the productions of those three companies for the three years you were examining, and you assembled them under the name of the Temple Iron Company, didn't you? A. That is correct.

Q. As if it were a producing company? A. Belonging to the Temple Iron, that is all I know.

Q. Do you know that? A. I am informed, I don't know it personally.

Q. Who informed you of that? A. I am informed by 2105
the attorneys.

Q. What attorneys? A. There is a report of it there from Mr. McReynolds.

Q. In other words a report from the Attorney General? A. Yes.

Q. And you read the report, is that true? A. No, I didn't read the report; I took those under those headings. The figures are mine.

Q. No, but did the Attorney General of the United States tell you the Temple Iron Company was a produc- 2106
ing company in the State of Pennsylvania? A. He did not tell me that; he gave me the statement.

Q. Wasn't this the statement that he gave you, that the Temple Iron Company was a company that owned all the stocks of certain producing coal companies in Pennsylvania, namely Sterrick Creek, Lackawanna Coal Company, Limited, and the Northwest Coal Company among others; did he tell you that that company was producing anthracite coal? A. No, sir.

Q. Didn't he tell you what I said? A. No, sir.

Q. He didn't tell you anything? A. No, sir. 2107

Q. He didn't tell you anything? A. No, sir.

Q. Have you got his statement that he gave you? A. It is there.

Mr. Warren: Let me see it, gentlemen, please.
(Mr. Warren was handed statement.)

Q. Did the Attorney General give you this memorandum? A. He did not give it to me; it was given to me through the attorneys for him, I suppose.

Q. You mean the counsel representing the Govern- 2108
ment here gave you this memorandum, is that it? A. Yes.

Q. I thought you said Mr. McReynolds gave it to you? A. It came from Mr. McReynolds.

Q. That is an assumption again, isn't it? A. There is something there that shows it.

Q. And you found on this memorandum that the counsel for the Government handed you a statement which shows as producers the Temple Iron Company, Sterrick

2109 Coal Company, Limited, so many tons; Lackawanna Coal Company, Limited, so many tons; Northwest Coal Company, so many tons, and so you adopted that in getting up the tabulation—— A. Just as far—so far as they were concerned.

Q. You know nothing of your own, nor did they give you any information, as to whether the Temple Iron Company ever produced a pound of coal? A. I wouldn't know anything about it.

Q. I would like to ask you who asked you to make up
2110 this statement in this form? A. I think the form was given to me and I looked it over and copied the same form.

Q. Who gave you the form? A. Counsel.

Q. Then you assumed they wanted you to get it up in the same form their's was. A. They wanted me to verify figures, which I have done.

Q. You designated headings on that tabulation, did you not? A. Which were copies of that.

Q. Copies of what Mr. Machen and Mr. Gordon handed you? A. Yes.

2111 Q. And that is all you had to do with the matter? A. No, I mean the tabulation that collated the tonnage.

Q. And that data has nothing to do with the designation of the headings of this tabulation? A. No.

Q. You did that, assuming they wanted you to do it that way because they gave you a paper that had it on in that way? A. A form of report, yes.

Q. The paper you had was not a report, was it? A. I don't know whether it is or not.

Q. You don't know whether it is or not, do you? A.
2112 It is a form of report.

Q. Would you call this a report? A. I would, yes.

Q. Will you show me what there is about it that justified you in doing it? A. What it shows, anthracite production in the years 1912——

Q. That means that there was a report? A. That was a report of gross tonnage as I see it.

Don't you suppose that might be prepared by somebody who assumed it was anthracite production without being a report from any proper source to designate it

as such? A. No; I verified all those figures in my own report. 2113

Q. Answer my question. There is nothing in this paper indicating it is a report by any producing company. A. No.

Mr. Warren: Then I object to the tabulation for the reasons assigned by counsel for the Lehigh Valley Coal Company, and for the further reason that it is now very clear that the report is manifestly unfair as it evidences the purpose of getting on the record an assumption of ownership and control of interest in the producing companies, which the evidence in this case does not justify. 2114

Mr. Boles: I make the same objection.

The Examiner: Mr. Machen, your case is now closed?

Mr. Machen: Subject to the reservations which have been made from time to time.

The Examiner: You are closed with this witness?

Mr. Machen: Yes, but it is conceivable I may want to ask him something on re-direct examination. 2115

The Examiner: Nothing affecting the Lehigh Valley Coal Company?

Mr. Machen: I won't say, as I do not know what the others are going to ask.

By Mr. Warren:

Q. Now, I would like to ask Mr. Storck at whose request did you make the comparisons of the stockholders' lists of the Lehigh Valley Railroad Company and the stockholders' list of the Lehigh Valley Coal Sales Company. A. At the request of counsel. 2116

Q. Who are here, you mean, these gentlemen? A. Yes.

Q. And when did they make that request of you? A. Several days ago.

Q. And did you carefully go over these stockholders' lists of the Lehigh Valley Coal Sales Company? A. I did.

2117 Q. And you found that the stockholders as there stated, were residing in how many different States? A. Oh, I didn't notice that.

Q. You found they were scattered in a large number of different States? A. Yes, sir.

Q. You found there were some on the other side of the water? A. I believe there were.

Q. You found that there were guardians of estates of minor children? A. Yes.

Q. And executors of deceased persons? A. Yes.

2118 Q. You found that there were trust companies? A. I left out the trust companies, a number of them, the Fidelity Trust——

Q. I am not asking you what you put in your list of fifty, but what you saw in going over that list? A. Yes.

Q. You found there were trust companies who were stockholders? A. Yes.

Q. And you found several banks and insurance companies that were stockholders? A. I don't recollect that; there may have been, but I wouldn't want to say there

2119 were not.

Q. Were there any insurance companies? A. No, I don't recollect that.

Q. Do you remember the names of persons indicating that there were women stockholders? A. Yes.

Q. In quite a large number, did you not? A. I wouldn't attempt to say how many in numbers, but I know there were some women there.

Q. I notice here on this list, to follow the practice of the counsel for the Government on **Exhibit No. 123,**

2120 that there is a Lady Geraldine Mitchelham, that she is stated here as owning 4,000 shares of the stock of the Railroad Company, but does not own any of the shares of the stock of the Sales Company; did you find that to be the fact? A. Yes.

Q. And you found that the Honorable Levi P. Morton of this city is the owner of 3,500 shares of the Railroad Company, but apparently none of the Coal Sales Company? A. Yes.

Q. And which you have named here under the first fifty, where there are blanks in the list of the Sales

Company among the very large stockholders, as you designate them, of the Railroad Company, certain persons are named as owners of the Railroad Company stock, but not of the Sales Company stock? A. Yes, that is so, but they may have held one or two shares for all I know, but I didn't find that. For instance, 3,000 and two shares, I wouldn't put down any coal shares for it; I took the larger, naturally. 2121

Q. But you did not then go over the list of stockholders of the Sales Company to ascertain the names of these stockholders? A. Oh, yes, we did.

Q. Then you found everybody that owned two shares, didn't you? A. Yes, but I wouldn't put down two shares. 2122

By Mr. Machen:

Q. I don't think you understand what Major Warren is asking you.

The Witness: Yes, I put it down wherever they had one share or four shares or two shares, and if I didn't find where—here is one here, 4,000 shares for Talmadge, I did not find any in the Coal Sales Company. 2123

Q. And so with Levi P. Morton? A. Yes; I did not look at Morton, but if it is blank it is the same way, yes.

Q. Did I understand you to say that the figures representing the number of outstanding shares of the Railroad Company were only those of the common stock and you made your comparison as between the list of the railroad company as of April 11, and the Coal Sales Company as of April 9th of this present year? A. Yes. 2124

Mr. Machen: It ought to be stated there that those were the dates selected by the defendants. We did not ask for the list on different dates; we asked for the lists as nearly as possible the same dates, and those were the two lists that were given us.

Mr. Warren: You asked for a list of stockholders and I said the nearest one to the date you

2125 asked for was April 9th, and I said I thought that would probably satisfy you, and you said it would. I had nothing to do with asking for a list of the railroad, but as far as my list was concerned, I gave you one of the most recent lists that we had and I added I would not say that the list of stockholders of the Sales Company on the 9th would represent the stockholders of the Sales Company on the 11th, because, as I hope to be able to show, there are changes daily in the stockholders' list.

2126 I do not mean by that to say I suppose it will change to any appreciable extent.

By Mr. Boles:

Q. Mr. Storck, did you state your position on the record? A. Yes.

Q. What was it? A. Expert Bank Accountant of the Department of Justice.

Q. Where did you get the Interstate Commerce answer to docket number 4914? A. From the Interstate Commerce Commission through Counsel, of course.

2127 Q. And all you know about those answers is what is contained on the face of the answer itself? A. Certainly.

Q. As to how far they represent all the facts of the transactions, you have no method of knowing? A. Only what is stated there.

Q. Now, then, on page 31 of the petition, you referred a table and state that was made from the answer and Question 50 in that docket? A. Yes, answer to Question 50, entire net income.

Q. Will you show me the copy of the answer from 2128 which you made that? A. I haven't got that here.

Q. Referring to the answer to Question No. 50, from which you made your table, will you state what the dividends declared by Coxe Brothers were, as shown in that answer for the year 1905? A. As shown here in this answer to the question?

Q. Yes. A. It is 174,609.

Q. And why didn't you include that in your table? A. Because it is not in the petition.

Q. You were just asked to check it against the petition? A. Against the petition.

Q. So far as the next figure, for instance, $531,321.81, you don't know who that dividend is paid to, do you? A. Oh, no. 2129

Q. For the same reason you cannot tell who the 1905 dividend was paid to? A. No.

Q. When you referred to the table on page 39 that I understand you prepared, you prepared that from the answer to question 50 also? A. Sheet 1, yes.

Q. Docket No. 4914? A. Yes, sir.

Q. That Sheet 1 is the Lehigh Valley Coal Company answer, is that right? A. Yes, Note 3. 2130

Q. Where is the Note 3? A. At the very bottom on 1.

Q. Do you see where these three stars are? A. Yes, sir.

Q. Now, how does that Note read from the beginning? A. (Reading). "Includes $4,134,029.17 charged to Lehigh Valley Railroad Company.

Q. And that is the total which is shown on page 39 in the petition? A. Yes.

Q. In other words, of the $10,000,000 disbursements during those years of the Lehigh Valley Coal Company not applicable to payments or retirements of principal 2131 there was interest of $4,134,029.17 charged to Lehigh Valley Railroad Company? A. No.

Q. That is what the note shows, doesn't it? A. Yes, the note shows that.

Q. What do you know about that beyond that note? A. I don't know anything about that only from this hearing.

Q. All you know about the transaction is what is in this note? A. And compared to Sheet No. 50.

Q. There is nothing on that answer to indicate whether 2132 it was collected from the Railroad or not? A. No.

Q. Now, Mr. Storck, when you refer to the answer to the Question Number 21, in Docket 4914, which is Government Exhibit No. 50 in this case? A. Yes, sir.

Q. Isn't the amount received during 1893 in payment of advances by the Lehigh Valley Railroad Company shown as $11,057,076.46? A. Yes.

Q. Then where do you get the figure $557,076.46, which is shown in the petition on page 40? A. Because there is the $5,000,000 bonds included in that.

2133 Q. Where is that stated? A. That is on the foot note. It says: "If any amount included in any column represents anything other than cash (considering as 'cash'—money, checks, drafts, bills of exchange, and other commercial paper payable at sight or realized upon at par upon demand), a suplementary statement should be furnished, describing the thing involved in the transaction and the amount by which it is represented in the statement."

Q. Where is the five million of bonds? A. It is on a
2134 supplementary statement. It is $10,500,000.

Q. That note, reads, 1893 (d) "Lehigh Valley Railroad Company received First Mortgage 5 per cent. Gold Bonds of Lehigh Valley Coal Company at par, $10,500,000"; that is, they received $10,500,000 of bonds and they received $557,076.46 cash? A. Yes, sir.

Q. Then why didn't you give credit for the bonds? A. Because I just was to verify these tables; these are not my computations.

Q. You verified them by excluding the matters referred
2135 to in the note to the answer to question No. 21? A. Yes. I took the petition and verified those figures.

Q. And as I understand you consider a bond as a repayment when it is given at par, don't you? A. I would.

Q. And if you take this answer to question No. 21, and note with it, and read them together, the answer shows that the coal company paid back to the railroad in 1893, $11,057,076.46, doesn't it? A. In cash and bonds.

Q. And of that amount over $10,000,000 was in 5 per cent gold bonds? A. Bonds.

Q. So that if you take page 40 of the petition, the first
2136 item of 1893, if it showed the full repayment as stated in the answer to question Number 21, it would not be a little more than half a million dollars, but would be over eleven million dollars, wouldn't it? A. If it was considered as cash, yes.

Q. If the five per cent. gold bonds of the Lehigh Valley Coal Company were worth par? A. Were worth par.

Q. Now, take the year 1897, page 40, states for 1897 that there was repaid $970,000. A. That would apply in the same way.

Q. The note to question number 21, shows that there 2137
was in addition to the amount of $970,000, $5,000,000 in bonds paid that year. A. Second Mortgage bonds, yes.

Q. They were Second Mortgage Five per cent. gold bonds? A. Yes.

Q. So that if these five per cent gold bonds were worth par, the amount repaid should show on page 40 of the petition as $5,970,000.00? A. If at par.

Q. Now, referring to the item for the year 1905, the petition states that $180,000 was paid in that year; will you refer to the answer to question Number 1 and say 2138
what else was paid that year? A. $2,000,000 in bonds—to be exact, $2,050,000.

Q. And will you refer to the note to the answer to question number 21, and show how that two million dollars was made up? A. It shows the Lehigh Valley Railroad Company received certificates of indebtedness of the company for $2,050,000.

Q. And then the note just above that. A. The Lehigh Valley Railroad Company received 2,901 shares of capital stock of Wyoming Coal & Land Company, par value $290,100, making $130,000. 2139

Q. That is the annual charge which they were credited? A. Yes.

Q. Then the Government has taken of the $2,180,000 and placed in the petition the Wyoming Coal & Land stock at $130,000, and has added to it $50,000 of the certificates of indebtedness? A. Yes.

Q. And you don't know why they omitted the two millions of the certificates? A. I do not.

Q. Now, as a certified public accountant, so far as this answer goes, the two millions of certificates were 2140
worth just as much as the fifty thousand were? A. I don't know whether they are or not.

Q. So far as the face of this answer is concerned? A. Yes.

Q. So that if you take the full facts set forth in the answer to the question Number 21, Docket No. 4914, you ought to add to the table at the bottom of page 40 the amounts, $10,500,000—$5,000,000 and $2,000,000. A. I wouldn't.

2141 Q. Why not? A. Because I don't know whether at par or not?

Q. So far as the face of the answer is concerned, if the certificates of indebtedness and the bonds are worth par then you ought to add— A. Do you want me to assume that?

Q. Yes. A. Yes.

Mr. Machen: You also want to assume that this is not a cash account of itself.

The Witness: Yes, if they want me to assume.

2142 Mr. Machen: Doesn't this on page 40 represent cash?

The Witness: Yes; the foot note says that.

Q. Will you kindly read the petition, page 40? A. The petition does not state that, no.

Q. The petition does not say whether it is cash or not? A. Yes.

Mr. Machen: But it shows it on page 41; it goes on to show it; it shows the refunding.

2143 Mr. Boles: I don't see the word "cash" mentioned anywhere.

Q. Did I understand that you are accountant of the banking department? A. I am.

Q. Do you have to do with the estimating of the values of securities in your work? A. No.

Q. Were you here yesterday when the Government placed in evidence certain statistics as to the quoted value of bonds of the Lehigh Valley Coal Company? A. No, this is my first day here.

2144 Q. Now, referring to Government Exhibit No. 122, the calculations of interest upon interest which you have made up in that statement were calculations which you made upon request? A. Certainly.

Q. And you do not attempt to express any opinion as to whether they are real and actual charges or not? A. Why, no.

Q. And the same way about the difference between what interest would be at 4 per cent and what it would be at 5 per cent? A. No; those are only calculations.

Q. Only calculations which you made on request? A. Yes, sir.

Q. So far as you know the proper amount of interest might have been 3 per cent or 2 per cent, whatever the rate would be? A. I would not know, naturally. 2145

Re-Direct Examination by Mr. Machen:

Q. Mr. Storck, isn't it true that this table on page 40 of the petition, or these two tables on page 40 of the petition, are simply a cash statement? A. Exactly.

Q. And isn't it also true that this begins with the year ending June 30th, after the funding of the previous indebtedness and issue of the $10,500,000 of bonds which Mr. Boles first called attention to? A. Yes. There is no date on here, only year dates. 2146

Q. But the point I am calling your attention to is that the tables on page 40, commence after the funding of the previous indebtedness by the issue of the $10,500,000 of bonds of the Coal Company to the Railroad Company, isn't that so? A. The statement on page 40 begins with the year ending June 30, 1893 and here it shows ending June 30th, 1893, and I don't know whether it is afterward or before.

Q. Yes, but that table did not purport to show or to to take any account of the $10,500,000 of bonds which were issued? A. No, sir, it does not. 2147

Q. It assumes their previous issue, doesn't it? A. I would say that that represents cash only.

Q. Isn't it true that the average book value of the balance due on open account as set forth in the statement on page 42 of the petition does not include the balance which on June 30th, 1893 was funded by an issue of $10,500,000 of bonds as shown on Exhibit No. 60? A. It does not. 2148

Mr. Boles: I object to the question because it is asking the witness about a matter which the witness says he knows nothing of. He only knows what is on the face of the papers themselves.

Q. But that is on the face of the statement? A. Yes; it is not included.

2149 Q. In reference to the Report of the Department of Mines of the State of Pennsylvania, on which you based certain calculations which were offered in evidence in this case, refering now to the report of 1910, won't you look at the index to that report, and state whether or not it appears from the figures as given there, that the Temple Iron Company was a producing coal company? A. Yes; I testified under examination by Mr. Warren that the Temple Iron Company was down for 907,000 tons.

2150 Q. In that year? A. In that year.

Q. Now, won't you please look at this paper, Government Exhibit No. 128, and tell us just which of the headings were your own suggestions or suggested by counsel, and which are literally taken from the report of the Department of Mines. A. The item "Reading Company" is not mine.

Q. That is not in the official report of the State of Pennsylvania? A. No. The item "Lehigh Valley Railroad Company" is not mine, or not from the report.

2151 Delaware & Hudson Company, that is in the report. Erie Railroad Company——

Q. The sub-heading, "Delaware & Hudson Company" is in the report? A. Yes, sir.

Q. By the explanation note Delaware & Hudson Company and the Hudson Coal Company and Delaware & Hudson Coal Company jointly is not in the report? A. No.

Q. You classified those under those headings? A. Yes.

Q. But the name of the operating company, such as the Pennsylvania Coal Company and Lehigh Coal &

2152 Iron Company, and the Lehigh Valley Coal Company and Coxe Brothers & Company are all taken from the report? A. Yes.

Q. And the amount of output from the report from those companies? A. Are taken from the report.

By Mr. Boles:

Q. Mr. Storck, all you know about any production of coal by the Temple Iron, is what you may find in that report? A. Oh, yes.

Q. Is there any report published for the year 1913? 2153
A. That I don't know, sir. I suppose there is. They publish them every year.

Q. Where did you get the total on Government Exhibit No. 122, showing certain preferences given to the Lehigh Valley Coal Company? A. That is mine.

Q. What led you to use the word "preferences?" A. Because I would consider it such.

Q. From what? A. From the facts here.

Q. Assuming that the things stated in the petition were true? A. Yes, of course. 2154

By Mr. Machen:

Q. You mean assuming the truth of the basic figures from which you compiled this? A. Exactly, from the Report to the Interstate Commerce Commission and assuming that those figures were true as set forth in the petition, from which the statement has been compiled.

Q. Your statement is the mathametical computation, in other words? A. A computation.

Mr. Machen: Mr. Boles, I think you said there was no objection to our filing this (exhibiting 2155 paper). The witness, Albert H. Armstrong, havin the course of his examination stated that he would prepare and file with the Examiner a statement showing the general average f. o. b. prices New York Harbor for anthracite coal of various sizes, as reported by the Bureau of Anthracite Coal Statistics for the years 1909 to 1913, inclusive, the same is now produced and, with the consent of the defendants, we offer this in evidence.

Received and marked **Government Exhibit No. 128.** 2156

Note: It is agreed that Government Exhibit No. 102, being statements as to contents of mining leases, may be received in evidence of the facts therein stated subject to any exceptions to which the original leases if produced and duly proved might have been subject.

Hearing adjourned to Monday July 20, 1914, at 10 o'clock A. M.

2157 **GOVERNMENT TESTIMONY IN REBUTTAL.**

UNITED STATES vs. LEHIGH VALLEY RAILROAD CO.

New York, August 5th, 1914.

Hearing resumed pursuant to adjournment.

APPEARANCES AS BEFORE.

2158 Mr. Warren: On behalf of the Lehigh Valley Coal Sales Company I desire to offer in evidence the pleadings in the case of the *United States against the Delaware, Lackawanna & Western Railroad Company* and *the Delaware, Lackawanna & Western Coal Company*, and the opinion of the Circuit Court of the United States, and of the United States District Court for the District of New Jersey.

Mr. Machen: We interpose no objection to it on the ground of the lack of certification of the copies or incompleteness of the record, but do object on the
2159 ground that the case in which the pleadings and opinion are offered is between different parties, to wit, between the United States and the Delaware, Lackawana & Western Railroad and the Delaware, Lackawanna & Western Coal Company, and that said pleadings and opinion are irrelevant and inadmissible in this case.

It is mutually agreed that an appeal to the Supreme Court of the United States is now pending from the decree of the United States District Court passed in pursuance of the opinion which has just been offered in evi-
2160 dence.

It is also agreed that counsel for the Government shall have the right in this case, notwithstanding the closing of the testimony, to file with the Examiner a copy of the appeal papers.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 55.**

It is agreed that this exhibit need not be transcribed by the stenographer, but may be incorporated in the printed record in this case.

Mr. Machen: I read the following from 82 Federal 2161
Reporter, page 1002:

> "*Interstate Commerce Commission* v. *Lehigh Valley Railroad Company* (Circuit Court of Appeals, Third Circuit, October 1st, 1897), No. 28. Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania. No. opinion. This cause having been called for argument in its regular order, and upon motion of counsel for appellant it is now here ordered, adjudged and decreed by this Court that the appeal be and the same 2162
> is hereby withdrawn at the costs of appellant. See 74 Federal, 784."

Note: It is agreed that the foregoing report will be received in evidence with like effect as a certified transcript of the record, being the proceedings upon an appeal from the decision of the Circuit Court for the Eastern District of Pennsylvania, in which case the opinion was filed in evidence by the Lehigh Valley Railroad Company. Marked **Lehigh Valley Railroad Company Exhibit No. 94.** 2163

Note: It is also agreed by counsel that either party may refer to any of the opinions of the United States Commerce Court, or of the United States Circuit Court for the Eastern District of Pennsylvania, growing out of the decision of the Interstate Commerce Commission in the *Meeker rate case* with the same effect as if that were duly incorporated in this record.

Mr. Machen: I now offer in evidence extracts from the minutes of meetings of the Board of Directors of the Lehigh Valley Railroad Company held November 2164
13, 1894, and May 12, 1896, respectively, which have been furnished by counsel for the Railroad Company.

Marked **Government Exhibit No. 131.**

Note: It is agreed that the extracts above offered in evidence may be received with like effect as the original minutes if duly produced and proved before the Examiner.

Mr. Machen: I now offer in evidence a table, which I now file, showing the balance due the Lehigh Valley

2165 Railroad Company on open account from certain coal companies and other corporations therein mentioned at the close of each year, together with interest received upon such accounts during the year. This table that has been handed to me by counsel for the Railroad Company was prepared at our request made at or before the commencement of the Government's case.

Note: It is agreed that the witness J. I. Morrison, if present, would testify that he had prepared the said table and that the same is in accordance with the books
2166 in the possession of the Railroad Company, or in his possession.

Marked **Government Exhibit No. 132.**

Mr. Machen: We also offer in evidence, a table, which I now file, being the statement of the average rates per net ton per mile received by the Railroad Company during the fiscal years from 1900 to 1913, inclusive. This paper was prepared by the witness Dausmann in pursuance of a request made by counsel for the Government when he was on the stand as a witness for the defendants.

2167 Note: It is agreed that the exhibit is correct.

Marked **Government Exhibit No. 133.**

Mr. Machen: We also offer in evidence the accompanying table which I now file, being a statement of the tons, revenue and average revenue per net ton per mile on anthracite coal and all other freights separately from Hazleton, Pennsylvania, and Wilkes-Barre, Pennsylvania to various points, fiscal year ended June 30th, 1913.

It is agreed that this exhibit is correct.

2168 Marked **Government Exhibit No. 134.**

Mr. Machen: We also offer in evidence the accompanying tables showing the number of cars, commodities, net contents and freight charges on merchandise freight from Hazleton, Pennsylvania and Wilkes-Barre, Pennsylvania to various points for the fiscal year ended June 30th, 1914.

It is agreed that this exhibit is correct.

Marked **Government Exhibit No. 135.**

William P. Charb, called as a witness on behalf of 2169
the Government, in rebuttal, being first sworn, testified as follows:

Direct Examination by Mr. Gordon:

Q. What is your occupation? A. Lithographic artist.

Q. Where do you reside? A. Philadelphia, Pennsylvania.

Q. By whom are you employed? A. By the Ketterlinus Lithographic Manufacturing Company, the oldest established and present day existing concern in Philadelphia. 2170

Q. Have you at the request of counsel for the Government gone to the office of Mr. Baird, Secretary of the Lehigh Valley Railroad, in Philadelphia, and made a copy upon a flat surface of a colored map which hangs upon his wall? A. I went down to the office of Mr. Baird, of the Lehigh Valley Railroad, and made an exact copy of a relief map hanging in Mr. Baird's office.

Q. Is this map which I now show you a copy of the map which you have prepared? A. That is the map, yes, sir. That is the map that I executed, a copy ex- 2171
actly as the relief map.

Q. And the areas of these colored regions show? A. Show precisely the colors very close so we can help ourselves in lithographing it, to reproduce it. These colors are a little lighter than the colors on that map, because they have faded out.

Q. But the respective colored areas have been exactly copied? A. Exactly copied from the relief map.

Q. And in accordance with the legend in the lower right hand corner? A. Yes. 2172

Mr. Gordon: I offer this map in evidence.

Mr. Boles: This map contains a legend which shows it contains properties controlled by the Lehigh Valley Railroad Company, and of other companies—whatever that means—by Edward B. Harden. I object to the use of this legend on the map because it is untrue and it has not been shown to be true, not been shown to have been put on there by authority of anyone in the em-

2173 ploy of the Lehigh Valley Railroad Company; it has not been shown who Mr. Harden is or under whose authority he prepared the map, nor has it been shown by whom or under whose authority this legend was placed on the map.

Marked **Government Exhibit No. 136.**

Mr. Machen: I offer in evidence the answer of the Lehigh Valley Railroad Company to question No. 29 of the Interstate Commerce Commission in Docket No. 4914.

2174 Marked **Government Exhibit No. 137.**

Mr. Machen: We offer in evidence the income account of the Lehigh Valley Railroad Company, for the years ending June 30th, 1908 to 1913, inclusive, as found in the annual reports of said company.

In the same way we also offer in evidence the annual balance sheets from the same report for the years ending June 30th, 1908 to 1913, inclusive.

2175 Mr. Boles: I object to both offers as it has not been shown that the balance sheets and income accounts here offered are correct in any way. It has not been shown that they come from authenticated copies of the annual reports of the Lehigh Valley Railroad Company, and not been shown that they are relevant as rebuttal in this case.

Mr. Machen: If there is any objection on the ground of the authenticity of the copies——

Mr. Boles: I will object unless you put the

2176 whole annual reports in evidence.

David G. Baird, recalled on behalf of the Government, 2177
testified as follows:

Direct Examination by Mr. Machen:

Q. Mr. Baird, is the paper which I now hand you a copy of one of the annual reports of the Lehigh Valley Railroad Company for the year 1913? A. It appears to be a printed copy of the report for 1913.

Q. One of those which are sent out by you to the stockholders? A. I don't know whether that one was or not. It appears to be similar to the copies which we 2178
did send out.

Q. You copied the annual reports in the minutes? A. No, sir.

Q. You send them to the stockholders? A. I do.

Q. Have you copies, or will you produce a copy of the annual reports from 1908 to 1913, inclusive? A. Yes.

Q. Now? A. No, I cannot do it.

By Mr. Boles:

Q. Mr. Baird, have you in your office, or have you on your wall, a relief map which states on its face that 2179
it was prepared by one Edward B. Harden? A. Yes.

Q. Where did you get it? A. It was purchased by the Lehigh Valley Railroad Company from Edward B. Harden.

Q. When? A. It would be very difficult for me to tell you the exact year, but I should suppose it was twenty years ago, nearly.

Q. Who was Edward B. Harden? A. Mr. Harden was attached to the Geographical Survey of the Commonwealth of Pennsylvania.

Q. Under what circumstances was it purchased? A. 2180
Mr. Harden produced the map at our office and asked our people to purchase it, and they did.

Q. Were you the Secretary of the Railroad at that time? A. I was not.

Q. What was your position? A. I was assistant secretary if my memory serves.

Q. Under whose authority, if you know, did he place the legend on that map? A. I don't know.

2181 Q. Do you know whether he placed it on under the authority of any employe or officer of the Lehigh Valley Railroad Company? A. I am sure he did not.

By Mr. Machen:

Q. This is the map about which you were asked when you were on the stand as a witness for the Government, isn't it? A. I don't remember if I was asked anything in regard to the map.

Q. But you did testify in reference to it; it is the same
2182 map I mean as to which you testified before? A. This is the first testimony I have given in regard to that map.

The Examiner: No, you testified the very same thing in regard to it.

The Witness: Well, if I did, then it is the same map.

Lewis A. Tompkins, recalled on behalf of Petitioner,
2183 testified as follows:

Direct Examination by Mr. Machen:

Q. Have you at the request of counsel for the Government prepared a statement showing the royalties paid to Coxe Brothers & Company since the purchase of the coal by the Lehigh Valley Railroad Company? A. Yes.

Q. Is this it? (Showing witness paper.) A. Yes, sir.

Mr. Machen: I offer this in evidence.

Marked **Government Exhibit No. 138.**

2184

Q. Do you know to whom these royalties were payable? A. Various parties; I could ascertain.

Q. Some of the members of the Coxe family, were they not? A. Yes.

Q. And some to the Lehigh Valley Coal Company? A. Yes, sir.

Q. This statement is correct? A. It is.

Q. When you were on the stand as a witness for one of the defendants you were interrogated as to the table

found on the bottom of page 35 of the petition, which 2185
purports to show the results of the sixty-five per cent. contracts in the year 1901, and if I recollect it correctly, you stated that the estimate or amount there mentioned of ten cents as the approximate expense of selling was higher than your experience had justified, am I correct? A. I do not recall the question correctly, but what we have called selling expense is less than that; that item evidently includes what we call selling and handling expense.

Q. Will you not explain what your distinction is be- 2186
tween expense of selling and expense of selling and handling? A. Expense of selling embraces the cost of the sales agencies, that is, salaries of the sales agents and clerks and salesmen, the office rent, his traveling expenses, telephone and any other expense incident to his office. The handling expense would cover the storage of coal, maintenance of the plants, pay rolls and all expenses in connection with it.

Q. Then would the sum of ten cents per ton be about right as covering the expense of both selling and handling? A. I have submitted a statement to-day which I 2187
think approximates that. I would like to look at it.

Q. Is the paper which I now show you the paper which you refer to? A. Yes, sir.

Q. Is the statement correct? A. That is from the books of the company, yes, sir.

Mr. Machen: I will offer this statement in evidence.

Marked **Government Exhibit No. 139.**

Q. In the table which you have just submitted, **Gov-** 2188
ernment Exhibit No. 139, you find that the degradation and wastage during the years from 1909 to 1911 inclusive, amounted to 3.26 cents per ton. Now, I ask you whether you have applied that degradation and wastage only to prepared sizes, or to steam sizes as well? A. That is an average figure obtained by dividing into the entire cost of storing coal, our entire sales. Whether the coal was stored or not that was an average figure.

Q. But it means the average for the degradation dur-

2189 ing those years was as I understand the exhibit, 3.26 cents per ton for all sizes, including the steam sizes? A. Yes.

Q. Now, as a matter of fact, the degradation takes place to an almost infinitesimal extent in the case of steam sizes, isn't that so? A. That is correct; but, as I said before, that is an average of all of our sales. The expense of any one storage plant would vary.

Q. I am not criticising the statement, the method, but simply endeavoring to bring out exactly what was done?

2190 A. The degradation undoubtedly is in the prepared sizes chiefly.

Q. What have you to say as to the correctness of an estimate of five cents a ton for degradation applied only to prepared sizes and not apportioned it among all sizes? A. That would be very nearly equivalent to three cents on all sizes. It would vary according to the proportion of sizes; it changes all the time.

Q. So that the amounts which were deducted in the table on page 35 and also in **Government Exhibit No. 126** for cost of selling and wastage are approximately

2191 correct if you include in the cost of selling the cost of handling, the cost which you technically term—— A. The Government's statement shows 15 cents as against an average of 13.63 on the Coal Company's books.

Q. But the 13.63 is allowing 3 cents per ton, or approximately 3 cents per ton, for degradation, and applying the degradation to all sizes including the steam sizes as well as the prepared? A. That is correct.

Q. Now, if you allow for wastage only on prepared sizes, as is done in **Government Exhibit No. 126**, the

2192 amount deducted for wastage would be about correct, wouldn't it, approximately correct? A. Yes. I just testified that was approximately the right figure.

Q. Then the criticism which you have to offer of **Government Exhibit No. 126** is merely that while it may be correct as to such of the sixty-five per cent. coal as was sold at tidewater, yet so large a proportion of the Lehigh Valley Coal Company's sixty-five per cent. coal was sold at points other than tide, at which higher prices were realized, that upon the whole transaction you think that in that year at least a profit would be shown?

Mr. Boles: As this particular line of examination involves the charge formerly made in this case, that there was some element of rebating involved, I will object to that question as the witness has not so testified to any extent. 2193

Mr. Warren: I would like to object to the question affecting prices, as it is not rebuttal; if anything, it is part of the Government's case in chief. In other words, it is an effort upon the part of this witness called in rebuttal to support their argument set forth in their petition, page 35. 2194

Q. Answer the question. (Question read.) A. You are referring to the year covered by the statement, 1907?

Q. Yes. A. The coal purchased on the sixty-per cent. contract in the Wyoming region during that year was sold at a profit.

Q. On account of the coal sold at points other than tide?

Mr. Boles: I object to that question, because I don't think this witness ever testified there was a loss upon coal sold at Perth Amboy. 2195

A. I do not recall that I checked that figure as to whether there was any coal sold at tide. There was a profit on all the coal sold everywhere.

Q. Have you checked the figures shown in **Government Exhibit No. 124**, being the New York Harbor f. o. b. prices of anthracite coal from each of the three trade regions realized by the Lehigh Valley Coal Company in the year 1907, and being also one of the bases for Government Exhibit No. 126, with the figures in your books as to the prices received by the Coal Company at tide, New York Harbor? A .They are correct. 2196

Q. They were verified and you found them correct? A. Yes, sir.

Q. Have you similarly verified to a sufficient extent to satisfy you of their correctness, the figures shown upon **Government Exhibit No. 125**, which is also one of the supporting papers, and the basis for **Government Exhibit No. 126**? A. Each item on this was not verified,

2197 but it was verified sufficiently—a sufficient number of them—to satisfy me of their correctness.

Q. You verified a number taken at random? A. Yes.

Q. You found them in every case to check with your figures in your books? A. Yes.

Q. Have you prepared in accordance with a request made of you when you were on the stand as a witness for the Government under direct-examination, a statement showing the prices paid by the Lehigh Valley Railroad Company to the Lehigh Valley Coal Company for its supply coal from the anthracite mines? A. I
2198 have prepared such a statement, but it was not requested at my last examination, if that makes any difference.

Q. Have you prepared such a statement? A. I have.

Q. Is the paper which I now show you it? A. That is correct.

Mr. Machen: We offer this paper in evidence. Marked **Government Exhibit No. 140.**

Mr. Boles: I object to it as not constituting
2199 rebuttal.

Q. How long a time have these prices been in effect, do you know? A. Some years; I cannot state off-hand.

Q. Have you similarly prepared in accordance with the like request, a statement showing the prices paid by the Lehigh Valley Railroad Company for bituminous coal at the so-called Snow Shoe Mines? A. Yes.

Q. And is the paper which I now hand you the paper you refer to? A. Yes.

Q. Is it correct? A. It is correct.

2200 Mr. Machen: We offer that paper in evidence.

Mr. Wheaton: I will object to that as not rebuttal.

Mr. Boles: I make the same objection.

NOTE: It is agreed that **Government Exhibit No. 48,** being a statement of anthracite coal purchased from the Lehigh Valley Coal Company during the period shown, was prepared by Mr. Tompkins from the books of the coal company, is

furnished the Government's counsel at their re- 2201
quest, and is correct.

Statement of sales of bituminous coal from Snow Shoe Mines marked **Government Exhibit No. 141.**

Q. Mr. Tompkins, in some of the testimony adduced on behalf of the defense, reference has been made to the book value of coal on the books of the Lehigh Valley Coal Company. I want to ask you to explain how that book value is made up? A. The book value of the 2202
stock coal do you refer to?

Q. Yes, coal in stock on storage? A. The book value represented the cost of the coal.

Q. Does it include the cost of transportation to the mines, or is that kept as a separate account?

Mr. Warren: I object to this as reiteration; the same counsel asked the same witness this question before.

A. Are you referring to the ordinary method in which 2203
we kept our books or to any specific times?

Q. Yes, as to the ordinary method? A. In the ordinary method we kept them separate; stock coal so much, freight paid so much.

Q. So that ordinarily the book value of coal does not include any cost of transporting it from the mines to the point where it may happen to be?

Mr. Warren: I object to that.

A. It would depend on what book value you refer to. 2204
If you ask the book value at a certain stocking point naturally you would have to add what it cost to transport it to the stocking point.

Q. Yes, but the price at which it is carried on the books of your company does not include the cost of transporting, because you testified when you were on the stand before the freight charges are kept in an entirely separate account and are not charged to coal, isn't that so? A. Our statistics were kept in the manner you say; the stock coal in one account and freight in another account.

2205 Q. Now, won't you explain whether or not when you testified that the coal in storage bought from the Lehigh Valley Coal Company by the Lehigh Valley Coal Sales Company was paid for at what turned out to be upon the whole to within a fraction of one per cent. of the book value, you meant the book value without including the cost of transporting to the various storage points, or whether you did include it and if so why? A. The coal was sold to the Sales Company at the various stocking points where it had been stored; where it was
2206 in storage; therefore, it had to include the cost of transporting.

Q. Did you make up that item for this storage coal at the time of the transfer to the Coal Sales Company? A. As near that time as it could be done.

Q. I mean to say about that time for that purpose? A. Yes, certainly.

Q. Have you recently compared the average f. o. b. price received at Perth Amboy by the Lehigh Valley Coal Company for shipments of stove coal from the Wyoming region in January, 1901, as stated at the bot-
2207 tom of page 35 of the petition with the figures in your books, and if so, what difference do you find? A. The records of the company show the average for that size for that time as $4.44.

Q. Instead of $4.36? A. Yes.

Q. So that that would make a difference of 8 cents in the table shown on the bottom of page 35, would it not? A. That would make a difference in that calculation of 8 cents.

2208 Cross-Examination by Mr. Boles:

Q. Mr. Tompkins, to what extent do the office expenses which you have testified to as the figures which you include in the cost of selling coal obtain in respect of stove coal at Perth Amboy; in other words, are there any of those expenses involved in reference to the selling of stove coal at Perth Amboy? A. Are you referring to the selling expense? That is what I testified to, as to what made up selling expense and office expenses of sales agents, salaries, travelling expenses, rentals, &c.

Q. To what extent do they apply, those different items 2209
apply, in respect of the sale of stove coal at Perth Amboy? A. I am not exactly clear on that question, Mr. Boles; I don't know as I can answer it properly.

Q. The Government alleges here that there was a cost of selling under an approximate expense, selling expense, of ten cents a ton on stove coal at Perth Amboy in January, 1901? A. Well, the expense of selling would be pro rata over all the sales, and I testified that ten cents would be the approximate cost per ton of selling and handling expenses. 2210

Q. That includes office expenses? A. Yes.

Q. Traveling expenses of agents? A. Yes, with expenses of storage plants.

Q. Clerical expenses? A. Certainly.

Q. Now, did you in January, 1901, have any selling agents located at Perth Amboy? A. I was not with the company at that time, but I never heard of a selling agency located at Perth Amboy.

Q. Are the prices for coal which the Lehigh Valley Railroad Company bought from the Lehigh Valley Coal Company for supply purposes as shown in the two ex- 2211
hibits just offered in evidence, one covering anthracite and the other Snow Shoe bituminous, fair prices for these sales that were made? A. They are matters of negotiation; I understand they are considered fair to both parties.

Q. In other words, the Lehigh Valley Railroad was a customer of the Lehigh Valley Coal Company in the purchase of that coal, just the same as any other customer? A. Exactly.

Q. And was treated no differently one way or the 2212
other? A. That is correct.

Q. To what extent does the wastage prevail in the merchandising of stove coal? A. Stove coal is one of the prepared sizes and will be subject to wastage; as to the exact figure on a particular size of coal I could not say. For a series of years applying on all of our sales three cents per ton was an approximately correct figure.

Q. On what kinds of coal? A. Applying that to all sizes of coal, and all sales, whether there was storage or not.

2213 Q. And irrespective of the number of times the coal was handled and where it was handled and how it was handled? A. Or where it was not handled at all.

Q. Isn't there a considerable amount of wastage due to the number of times the coal is handled? A. Yes; that affects it, of course.

Q. The less rehandling, the less wastage? A. Yes.

Q. When you computed your three cents for wastage that included also coal which was sent all over the United States? A. All over the United States, or sent
2214 direct without being rehandled at all. That was an average figure applied to all sales, our working basis.

David G. Baird, recalled.

Direct Examination by Mr. Machen:

Q. Mr. Baird, have you examined the books of the Lehigh Valley Railroad Company as to the number of shares of stock formerly held by Mr. John Markle with
2215 the dates of acquisition thereof? A. I have.

Q. Will you please state what the result of your investigation was?

Mr. Warren: I object as not rebuttal.

A. This statement shows that John Markle acquired six shares of stock in January, 1885, two shares of stock in May, 1888, 90 shares of stock in January, 1889, making a total of 105 shares. He sold it all in May, 1893.

Mr. Warren: So that to-day he is not a stock-
2216 holder at all?

The Witness: Mr. John Markle is not a stockholder of the Lehigh Valley Railroad.

By Mr. Boles:

Q. From whom did Mr. John Markle acquire the 97 shares which were transferred in 1889? A. From the estate of G. B. Markle.

Recess Taken Until 2.30 O'clock P. M.

AFTER RECESS. 2217

Mr. Machen: We offer in evidence an extract from the minutes of a meeting of the Board of Directors of the Lehigh Valley Railroad Company held July 13, 1897, relating to the resignation of Mr. E. P. Wilbur, President.

Marked **Government Exhibit No. 142.**

John T. Edwards, a witness called in rebuttal, being 2218
first sworn, testified as follows:

Direct Examination by Mr. Machen:

Q. What is your residence and occupation? A. My residence, Plymouth, Pa.; clerk for the Plymouth Coal Company.

Q. I believe the Plymouth Coal Company operates the Black Diamond colliery, does it not? A. Yes.

Q. Are you familiar with that colliery? A. Yes.

Q. Are you familiar with the operations in connection with it? A. Yes. 2219

Q. How long have you held your present position? A. Twelve years.

Q. And have been familiar with the Black Diamond colliery all of that period? A. Yes.

Q. Please look at the paper which I now hand you and state what it is? A. It is a blue print of the trackage at the Black Diamond colliery.

Q. Does it correctly represent in a general way the lay out of the tracks and arrangements of the colliery? A. Yes, sir. 2220

Q. With what railroads is the Black Diamond colliery connected? A. The Black Diamond colliery is connected with the Delaware, Lackawanna & Western and the Lehigh Valley.

Mr. Machen: We offer this map in evidence.

Marked **Government Exhibit No. 143.**

Mr. Warren: I object to the map as not properly proven, nor is it rebuttal testimony.

Mr. Boles: Same objection on behalf of the Lehigh Valley Railroad.

2221 Q. Will you please explain the method of serving the Black Diamond colliery by the two railroads which you have mentioned? A. The Delaware, Lackawanna & Western and the Lehigh Valley both use the same tracks to convey the cars above the breaker. The Delaware, Lackawanna & Western leave their own switch, the main line, at the point marked "A" and bring their cars up above the breaker, using the track "B" and the Lehigh Valley they bring their cars from a position marked "C" which leads from the Coxton yard and
2222 use the same track "B" and take the cars above the breaker and place them in the switches at the place marked "Empty track."

Q. Does each railroad haul its own empty cars up to the empty tracks? A. Yes.

Q. Each railroad with its own locomotives? A. Yes.

Q. How are the cars taken out from the empty tracks to the breaker and thence sent to market? A. The empty cars are dropped by gravity to the breaker and they are loaded and dropped down into the loaded tracks.

2223 Q. To the place marked "Loaded track" on the Government exhibit which has just been offered, is that correct? A. Yes, sir.

Q. How are they hauled away from the place marked "Loaded track" on this exhibit? A. When the Lehigh Valley bring in their empty cars they take a strip of loaded cars away with them.

Q. With the same locomotive, you mean? A. With the same locomotive.

Q. Each railroad hauls its cars with its own locomo-
2224 tives? A. Yes.

Q. Suppose an empty car being dropped as you expressed, down by gravity from the place marked on this map "empty track" to the breaker gets stuck, what happens then? A. We have two ways of getting it back; we have an engine with a rope, that is, a stationary engine, with a rope attached to it that we pull them back, and we have a little dinky locomotive that we use to push them back.

Q. Do you find the arrangement for the operation of this colliery you have just described satisfactory?

Mr. Warren: I object to this gentleman determining what is satisfactory to the Plymouth Coal Company. I understand he is a clerk in their employ; the witness being incompetent and not qualified, and calling for an opinion. 2225

Q. Answer the question. A. Yes.

Q. Is any confusion occasioned by the service of the colliery by the two railroads? A. No, sir.

Q. Does the Plymouth Coal Company from this colliery ship any coal over railroads other than the Lehigh Valley and the Delaware, Lackawanna & Western? A. We ship over the Pennsylvania also. 2226

Q. How does the Pennsylvania get into the colliery? A. The Delaware, Lackawanna & Western serves.

Q. What do you mean by the Delaware, Lackawanna & Western serves? A. The Delaware, Lackawanna & Western connects the Pennsylvania cars at the point called West Nanticoke, brings the empty cars to the Black Diamond colliery and there they are loaded and take the loaded cars back to West Nanticoke.

Q. In other words, the Delaware, Lackawanna & Western perform a switching service for the Pennsylvania Railroad, is that it? A. Yes. 2227

Q. Are the cars pulled out upon a through billing from the Black Diamond colliery to the points reached by the Pennsylvania Railroad? A. Yes.

Q. How long have you been familiar with the conditions of the Black Diamond colliery? A. Twelve years.

Q. How long has the Lehigh Valley Railroad been connected with it, do you remember? A. No, sir, but I can say all of that time. 2228

Q. And the Delaware, Lackawanna & Western also? A. Yes, sir.

Cross-Examination by Mr. Boles:

Q. Who owns track "B," Mr. Edwards? A. Now, sir, I don't know who owns it. But I can tell you who keeps it in repair.

Q. Who keeps it in repair? A. The Lehigh Valley Railroad does.

2229 Q. And who owns the empty track? A. The Plymouth Coal Company.

Q. Down to where? A. All the way down to the breaker.

Q. Where does the maintenance by the Lehigh Valley stop on track "B"? A. Well, now, suppose we mark here—you see that there is a frog in there about opposite the breaker, and there is a frog here, a little above the breaker at this junction, we will call it "D."

Q. Then all of the tracks north of the breaker are
2230 owned by the Plymouth Coal Company? A. Except that track there, marked "B."

Mr. Machen: The upper track?

The Witness: No, marked "B," which goes all the way up to another colliery.

Q. That is the west track? A. Yes.

Q. And then all of the tracks east of "B" are owned by the Plymouth Coal Company? A. Yes.

Q. And the tracks under the breaker owned by the
2231 Plymouth Coal Company? A. Yes.

Q. And these loaded tracks are owned by the Plymouth Coal Company? A. Yes, sir.

Q. When the Lehigh Valley Railroad brings the empty cars they bring them up on track "B" and put them on these empty tracks? A. Yes.

Q. Suppose there were some Lackawanna cars on those empty tracks? A. We have three tracks and we try to put the Delaware, Lackawanna & Western on one and the Lehigh Valley on another and the Pennsylvania on another.

2232 Q. That is, the respective switching engines keep their empty cars on separate tracks? A. Yes.

Q. And then when you want to get cars under the breaker you bring down your Lehigh Valley cars and load them and send them down on your Lehigh Valley tracks? A. Yes.

Q. And then do you use these loaded tracks for the purpose of keeping the loaded cars separate also of the different railroads? A. Yes; we try to keep them separate.

Q. I suppose you don't keep them separate? A. We 2233
do.

Q. You don't do that yourself? A. Not personally, no, sir.

Q. I mean the Plymouth Coal Company don't, do they? A. Yes.

Cross-Examination by Mr. Warren:

Q. Will you tell me, please, who owns the track from "B" running down under the chutes of the breaker indicated on the blue print by dotted lines and running on 2234
down to the place marked "loaded cars"? A. The Plymouth Coal Company.

Q. In other words, the Plymouth Coal Company owns a track under the chutes of the breaker? A. Yes.

Q. The chutes of the breaker provide for loading upon a single track, don't they? A. Yes.

Q. And there is no space under a breaker constructed as that is for the delivery into railroad cars of coal in pockets except in one row of cars or a single track in other words? A. Yes, only a single track.

2235

Q. And this breaker is constructed in a way that requires only one row of cars and permits of only one row of cars to be under the chutes to transfer the coal out of the pockets into the cars, isn't that right? A. At one time, yes, sir.

Q. That is what I mean, at one time? A. Yes.

Q. And the Plymouth Coal Company itself owns that track? A. Yes.

Cross-Examination by Mr. Wheaton:

2236

Q. This breaker is at Luzerne Borough, isn't it? A. Yes, sir.

Q. Five miles or a little more to the west of Wilkes-Barre? A. Yes.

Q. What railroad was in there first? A. I don't know which was in there first.

Q. How long has the Plymouth Coal Company operated that colliery? A. I don't know that.

2237 Q. Who operated it before the Plymouth Coal Company operated it? A. I could only guess about that; I don't know. Mr. Haddock has owned it a long time.

Q. Didn't Mr. Haddock operate it? A. When I am speaking of the Plymouth Coal Company, I mean——

Q. You mean John C. Haddock? A. Yes.

Q. The same thing? A. I don't know if it is the same thing or not, he has owned it so long.

Q. But in your mind John C. Haddock and the Plymouth Coal Company means the same thing? A. No,

2238 sir.

Q. Who owns the stock of the Plymouth Coal Company? A. I don't know that.

Q. Who is the boss of the Plymouth Coal Company, you know that? A. Mr. Haddock.

Q. He controls it and does just what he pleases with it, don't he? A. I don't know.

Q. So far as your observation goes what he says goes, doesn't it? A. So far as I know, yes.

Q. Who was his partner that operated that at the time and they delivered all of their coal to the Delaware,

2239 Lackawanna & Western? A. I don't know, sir.

Q. You remember the litigation they had with the Delaware, Lackawanna & Western over cars? A. No, sir.

Q. That was before your time? A. That was before my time.

By Mr. Warren:

Q. Do you know the output of the colliery, say last year, the year 1913; what did you ship over the three

2240 roads you have spoken of? A. The operation is about 600 tons a day; that is about what it is.

Q. You don't mean by that it is 600 tons a day 365 days? A. No, sir, working days.

Q. What I mean is, can't you tell us what the annual output was? A. No, but I can get it out of the Mine Inspector's report.

Q. I call your attention to the Mine Inspector's report for the year 1912, the last one available, and I note that on page 315 it is stated the production of the Ply-

mouth Coal Company was 191,400 tons; would you say 2241
it was about the same in 1913? A. Yes.

By Mr. Wheaton:

Q. That includes all the production of the Plymouth Coal Company, doesn't it? A. Yes.

Q. That includes the production of the Plymouth Coal Company and the Black Diamond, doesn't it, or is that just the Black Diamond alone? A. No.

Q. Your company ships its product by three railroads, two practically at the chutes of the colliery under the 2242
arrangement you have described and the third under an arrangement with the Delaware, Lackawanna & Western which carries it to West Nanticoke and transfers it to the Pennsylvania there? A. Yes, sir.

Q. In distributing that tonnage to those three, how much of it would you say duing 1913 was shipped over the rails of the Lehigh Valley Railroad? A. I could not tell you that, sir.

By Mr. Wheaton:

Q. That coal which is taken by the Lehigh Valley Rail- 2243
road Company goes north to Coxton, doesn't it? A. Yes.

Q. How far north before it comes to the yard? A. I don't know.

Q. Don't you know how far Coxton is above Luzerne? A. No, sir.

Q. You know that country well? A. Oh, well, say, call it, let's guess at it, about five miles—four or five miles.

Q. And you have been in Coxton yard often, haven't 2244
you? A. Yes.

Q. And it is drilled out there for whatever point it is to be made up in trains, isn't it? A. Yes.

Q. Does the Delaware, Lackawanna & Western Coal go to West Nanticoke? A. No, sir.

Q. Where do they take the coal that doesn't go to West Nanticoke? A. The Delaware, Lackawanna & Western takes all the coal from the Black Diamond colliery to the Kingston yard, and Nanticoke coal——

2245 Q. That is at the village of Kingston? A. Yes.

Q. About three miles from Luzerne, below? A. A mile or two; not over two.

Q. And there they do their drilling out? A. Yes.

Q. And connect it on to the Lackawanna at the Bloomsburg division of the Delaware, Lackawanna & Western? A. Yes.

Mr. Gordon: I offer certain extracts from the document entitled "*Increase in Price of Anthracite Coal Following the Wage Agreement of May*
2246 *20, 1912,*" prepared under the direction of the Commissioner of Labor, being House Document No. 1442, Sixty-second Congress, third session. It being understood that any of the defendants may incorporate in the record any portion of the same document which they may desire.

Mr. Warren: I object on behalf of the Lehigh Valley Coal Sales Company to the offering of certain excerpts from any document upon the ground that it is incompetent, and that the only method the Government can adopt, as all other
2247 suitors, is to offer the document and to read into the record such portions as they desire, giving us the right as, of course, we would have any way, to read into the record such portions as we desire. I do not ask that the Government print the entire document, but I submit they cannot offer certain so-called excerpts from it; and I further object on the ground that it is not rebuttal, and I do not have an opportunity to see what it is before I am asked to either agree to its admission or
2248 object thereto.

Mr. Boles: I make the same objection on behalf of the Lehigh Valley Railroad Company; also on the ground that the whole document is incompetent and irrelevant in this proceeding.

Mr. Machen: We are ready to include as part of our offer any portion of this document, which consists of 128 printed pages, a large number of them being tables of statistics of one kind and another quite irrelevant to this case, that counsel

for any of the defendants may deem pertinent or relevant. 2249

Mr. Warren: To be offered by counsel for the defendants now?

Mr. Machen: Yes.

Mr. Warren: In other words, counsel for the Government offer part of a document of 128 pages and say that having prepared what they want to put in we can this afternoon put in what we want, otherwise they object.

Mr. Machen: We didn't say that. 2250

Mr. Gordon: Being marked paragraphs on the following pages: 11, 12, 33, 36, 43 to 45 inclusive, and 55, the whole to be marked collectively **Government Exhibit No. 144.**

Mr. Warren: I would like to add the further objection for my company, the document purports to be deductions and theories of some official of the Department of Labor, and is in a sense an effort to put in his deductions here, or, rather, theories, without any opportunity on the part of myself as representing one of the defendants to 2251 cross-examine him to verify the data on which he makes his deductions, and his arguments, and expressed his theories and views and notions, and is, therefore, incompetent, if it is for the purpose of charging my client with any of the things which the gentleman who prepared that document sees fit to suggest and state in his report to Congress.

Mr. Gordon: This is a public document and made so by Act of Congress and admissible in evidence for that reason. 2252

Mr. Boles: I will add right there that I want the next sentence on page 55, following the sentence you put in.

Mr. Warren: Replying to the Government counsel's statement that is a public document, that does not prove it or in any way make it competent evidence for the purpose of this case.

Mr. Boles: I desire the second sentence in the paragraph on page 55 of this document following

2253 the paragraph offered by the Government to be included for the purpose of showing the unreliability of the whole report.

Mr. Machen: We will incorporate the whole of the paragraph.

I have with me copies of the annual reports of the Lehigh Valley Railroad Company for the years ending June 30th, 1908 to 1913, inclusive, which were kindly given me by the counsel for the Lehigh Valley Railroad Company. I desire to
2254 offer in evidence the income accounts and annual balance sheets from these reports. Mr. Boles, will you admit that these are the reports that you gave me?

Mr. Boles: I don't know whether they are or not, but I will say that if you are going to offer the income accounts and general balance sheets from any annual report of the Lehigh Valley Railroad it is your duty under the law to offer the whole report and not try and separate one page of the report from its contents. Moreover,
2255 I do not see the relevancy of the offer as rebuttal testimony in this case and I object upon that ground to the offer.

Mr. Machen: Although we think that the income accounts and balance sheets are separate and distinct parts of the report and are not so blended with the other portions that the offer of the income accounts and balance sheets requires us to include an offer of the remainder of the reports, yet we are perfecty willing to include in
2256 our offer any portion of these reports in addition to the income accounts and balance sheets which counsel for any of the defendants may deem pertinent. Of course, reserving to any of the defendants all objections on any ground other than the authenticity of the reports which have been given me by counsel.

Mr. Boles: I do not admit they are authentic, and your suggestion in no way meets my objection. The mere fact that you may think the bal-

ance sheets and the income accounts are not so 2257
blended with the rest of the report that they may not be properly separated does not in any way make them distinctly separate.

Mr. Machen: I am not asking you to waive that objection; I am only asking you to not subject me to the necessity of taking the stand myself in order to testify that the reports which I have in my hand were the reports which you gave me.

Mr. Boles: I have stated my objection; I have 2258
nothing more to say.

Arthur W. Machen, sworn as a witness on behalf of the Petitioner, testified as follows:

Direct Examination by Mr. Gordon:

Q. Mr. Machen are these reports which I hand you reports which were furnished to you by Mr. Boles, 2259
counsel for the Lehigh Valley Railroad Company, in response to your request for the annual reports of that railroad company? A. They are. They were given to me sometime in the month of May, I think, 1914—certainly after this case was instituted and after I was employed.

Mr. Gordon: Now we offer to be marked collectively as **Government Exhibit No. 145,** the income accounts for the years ending June 30th, 1908 to 1913, inclusive, from these annual reports. 2260

Mr. Boles: I renew my objections.

Income accounts marked **Government Exhibit No. 145.**

Mr. Boles: I renew my objections.

Mr. Gordon: We also offer the balance sheets to be marked collectively **Government Exhibit No. 146.**

Mr. Boles: I renew my objections and give notice now that I shall feel at liberty to quote

2269 ance sheets had been abstracted by Mr. Machen as follows: "Marked for identification at the request of counsel for the Lehigh Valley Railroad Company, August 5th, 1914, B. W. B. Brown, Examiner.")

Mr. Machen: We offer in evidence a certified copy of the complaint of the Red Ash Coal Company against the Lehigh Valley Coal Company and others before the Interstate Commerce Commission, Docket No. 6276, together with the order of the Commission passed thereon, and a copy of
2270 supplement No. 14 to the Lehigh Valley Railroad Company Tariff I. C. C. D-508, filed April 18, 1914.

Marked **Government Exhibit No. 147.**

Mr. Boles: I object to this offer as incompetent and irrelevant, because it is incomplete and not proper rebuttal in this case.

2271 **William T. Grier,** recalled in rebuttal, testified as follows:

Direct Examination by Mr. Machen:

Q. Mr. Grier, is the paper which I now hand you the tariff I. C. C. D.-508 referred to in supplement 14 a copy of which is included in the papers just offered in evidence as **Government Exhibit No. 147**? A. It is.

Q. Is this supplement No. 14 the latest supplement to this tariff? A. It is.

2272 Q. Is this tariff as modified by supplement 14 now in effect? A. Yes.

Mr. Machen: I offer this tariff, I. C. C. D.-508 in evidence.

Marked **Government Exhibit No. 148.**

Q. When you were on the stand as a witness for the defense you furnished in evidence a list of joint tariffs in effect on the Lehigh Valley Railroad with connecting carriers? A. On anthracite coal from the Lehigh, Wyoming and Schuylkill regions.

Q. Yes. And you testified, if I recollect correctly, that 2273
the only anthracite coal tariffs now in effect from collieries in these anthracite regions on lines other than the Lehigh Valley Railroad to points on the Lehigh Valley Railroad were said tariffs from Red Ash, Pennsylvania and from collieries of the Lehigh Coal & Navigation Company and perhaps certain collieries on the Central Railroad of New Jersey, did you not? A. I don't think that is exactly correct. The statement I made was as to tariffs issued by the Lehigh Valley Railroad from collieries on the Central Railroad, including 2274
Red Ash, and the Lehigh and New England Railroad, and I supplemented that first by stating that my recollection was that the Central Railroad of New Jersey itself had several tariffs issued from their own collieries to points on the Lehigh Valley Railroad.

Q. Have you those tariffs—any such tariffs—on file in your office? A. Yes; we would have those on file in our office, yes.

Q. Will you produce those? A. Yes.

2275

Emil W. Kahn, a witness called in rebuttal on behalf of the Petitioner, being first sworn, testified as follows:

Direct Examination by Mr. Machen:

Q. What is your occupation, Mr. Kahn? A. Tide water sales agent for John C. Haddock & Company.

Q. In what business are John C. Haddock & Company engaged? A. Selling anthracite coal.

Q. How long have you held this position? A. Five 2276
years.

Q. What position did you hold prior to that time? A. Stenographer.

Q. You were connected with the—— A. Connected with John C. Haddock & Company and the companies that preceded them for the last twenty-five years.

Q. Have you been familiar with the anthracite coal business during all of that time? A. Yes.

Q. What do your duties consist of in your present position? A. The selling of coal.

2277 Q. What connection, if any, is there between John C. Haddock & Company and Plymouth Coal Company? A. John C. Haddock & Company sell the product of the Plymouth Coal Company.

Q. Are you familiar with the circumstances attending an offer which has been referred to by some of the witnesses for the defense, by the Lehigh Valley Railroad Company, to lease a tract of land to the Plymouth Coal Company for a coal storage plant?

Mr. Boles: I object to it. I ask leave to cross-
2278 examine the witness on that point.

By Mr. Boles:

Q. Are you an officer of the Plymouth Coal Company, Mr. Kahn? A. No, sir.

Q. And never were? A. No, sir.

Mr. Boles: Then I object to the question.

By Mr. Machen:

Q. Answer the question? A. Yes, I am.

2279 Q. How did you become familiar with it? A. Mr. Haddock is the president of the Plymouth Coal Company and he sent me copies of correspondence that passed between him and one of the officials of the Lehigh Valley Railroad.

Mr. Boles: I demand that that be produced.

Q. Did he consult with you at the time in reference to this offer? A. Yes.

Mr. Boles: Objected to as hearsay.

2280

Q. Please tell us whether or not that offer was accepted, and if not, why not?

Mr. Boles: Objected to.

A. The offer was not accepted.

Q. Why not?

Mr. Boles: Objection.

A. The Lehigh Valley alleged that they were offering 2281
us this storage facility on the same terms and conditions that they had leased their various storage facilities, trestles and pockets, to the Lehigh Valley Coal Sales Company. As a matter of fact, all they offered us was the bare tract of land on which they expected us to put up the necessary facilities for handling the coal and at the same time they would not give us a lease that we called a lease, inasmuch as they reserved the right to have us vacate the property on sixty days notice, whereas, the property that they had leased to the 2282
Lehigh Valley Coal Sales Company were all complete plants for handling the coal.

Mr. Warren: Object to the witness' statement as to properties they leased to the Lehigh Valley Coal Sales Company as there is no evidence that they ever leased a single property to that company, and it is all hearsay testimony as well as not the fact.

The Witness: To be more correct about it, the Lehigh Valley Coal Company leased to the Le- 2283
high Valley Coal Sales Company with the permission of the Lehigh Valley Railroad Company.

Mr. Warren: To which I object that the undisputed evidence in this case is that the Lehigh Valley Railroad Company has but one storage plant and that is at South Plainfield, and the witness is undertaking to testify on hearsay testimony as to facts which are untrue, as to any leasing by the Coal Company with the consent of the Railroad Company other than the single plant at South Plainfield, and that lease is in evidence, 2284
and, therefore, the witness' statement is not true as to the contents of that written document, I assume by reason of his unfamiliarity with the facts; I object to his hearsay testimony as nothing but hearsay.

Q. Are you familiar with the operation of the tariffs of the Lehigh Valley Railroad Company upon anthracite coal? A. Yes.

2285 Q. Will you explain to us the effect of the operation of the present tariffs of the Lehigh Valley Railroad Company as to demurrage upon independent shippers of anthracite coal?

Mr. Boles: Objection.

Mr. Warren: I object unless the witness tells us the tariff and the place, as being too vague and general in purport.

Q. Go ahead. A. The effect of the present tariff——

2286 Mr. Warren: I object to the witness stating the effect as stating a conclusion and not a fact.

A. (Continuing.) The effect of the present tariff on coal to Perth Amboy as related to demurrage is that it increases the rate on the anthracite coal to such an extent that it places a burden upon the individual operator.

Q. In what respect; explain more fully. A. On account of the limited tonnage that the average inde-
2287 pendent operator handles as related to what is handled by the larger companies; the relative cost per ton is quite considerable.

Q. How large a tonnage does your concern ship over the Lehigh Valley Railroad in the course of a year, do you know? A. That varies from time to time. It all depends on how the various market conditions will absorb the coal—you mean the total?

Q. In all directions; anywhere over the Lehigh Valley Railroad? A. I am not quite——

2288 Mr. Warren: The witness, I think, was simply the New York agent.

A. I am not in position to answer that question in as much as I only handle coal at the New York end.

Q. Can you give us any idea how much tonnage of anthracite coal over the Lehigh Valley Railroad you shipped to New York or tidewater? A. That will vary anywhere from 50,000 to 75,000 tons.

Q. 75,000 tons is a pretty high mark for it to reach, 2289
is it, in the course of a year? A. Well, I should judge that this year we may exceed that.

Q. The Lehigh Valley Coal Sales Company have offered in evidence a table of the amount of demurrage paid by their company since its incorporation in March, 1912, or since the commencement of its business; I say in March, 1912; I don't carry the figures in my mind, but could you give us some idea—in order to compare with that—as to the amount of demurrage which your company has been called on to pay? 2290

Mr. Warren: During what time?

Q. Within the past month. A. The demurrage rules became effective, as I remember, on June 1st, 1913.

Mr. Warren: You mean that one had operated high because of allowance of free storage?

The Witness: Yes; and as I remember during the months of July, August, September and November we were presented with bills for demurrage aggregating about, I should say, $700 to 2291
$800; in addition to that we have suffered vessel demurrage by reason of having to load coal on board vessels, particular sizes, for which there was little or no demand, aggregating over 1,300 tons, and to further illustrate how oppressive these rules are, during the present month—during the month of July of this year, I should judge that our demurrage charges will amount to something in the neighborhood of $1,800, to say nothing of the vessel demurrage that is accruing. 2292

Mr. Warren: I object to that as speculative and incompetent.

Q. You mean at the present month? A. The month of July. We have not got all the complete loading reports in yet to show just what the total amount will be, but it will be close on to $1,800; and in addition to that we will suffer additional penalty by reason of having loaded vessels with additional coal for which we have not yet found a market.

2293 Q. About how many tons are you able to ship in the average coal car furnished by the Lehigh Valley Railroad Company at the present time? A. The average?

Q. Yes. A. I should judge the average approximates at the present time somewhere in the vicinity of 40 tons. We have some cars loading 28 or 30 tons, some cars running from 40 to 50 tons, but based upon the cars we have been receiving in recent months the average is about 40 tons.

Q. Have you any experience or knowledge as to what
2294 the capacity of the coal cars was in former years? A. They have run all the way from 5 tons and upwards; the units have gradually been increased from what they called the so-called jimmies, carrying about 5 tons, until they have reached their present maximum, which I believe is somewhere in the vicinity of 50 tons.

Q. Have you since you have been a shipper on the Lehigh Valley Railroad ever seen any evidence, or have you ever felt that any discrimination existed in favor of the Lehigh Valley Coal Sales Company?

2295 Mr. Warren: I object to this evidence on the same grounds counsel for the Government did to a similar question asked the witness by counsel for some of the defendants; assuming that he had grounds for his objection, I think I have the same grounds now. I object to it as incompetent and ask him to state facts, not surmises or feelings, whether they be above or below the belt.

Q. Go ahead, Mr. Kahn. A. Yes.

Q. You have? A. Yes.

2296 Q. Is the Plymouth Coal Company, with which John C. Haddock & Company are affiliated as sales agents I think you stated, the complainant or one of the complainants in a suit against the Lehigh Valley Railroad before the Interstate Commerce Commission? A. Yes.

Q. One other question, Mr. Kahn: are you able from your familiarity with the coal business to state whether there is any advantage to the shipper or the seller of coal at tidewater in having connection at the mines with more than one railroad? A. Yes, decidedly so, especially in times when there happens to be a car shortage.

As an illustration, in the month of October, 1913 by 2297
reason of the car shortage on the Lehigh Valley Railroad Company the Plymouth Coal Company was obliged to send 101 cars of coal via the D. L. & W. Railroad to Hoboken thereby suffering the additional burden of the increased transportation charge as we were obliged to pay over and above the rate to Perth Amboy.

Q. Can you state whether or not the possession of the coal storage plants by the Lehigh Valley Coal Sales Company operates to the advantage of that company and the disadvantage of other shippers? 2298

Mr. Warren: I object to that as incompetent and immaterial and not rebuttal.

Q. Go ahead, Mr. Kahn? A. Yes; it works to our disadvantage in this way: under the demurrage tariff the shipper who has a storage plant has the right to consign coal to these storage plants getting the benefit of five days there, then has the privilege of reconsigning it to Perth Amboy where they obtain an additional five days, so that in reality a shipper who has a storage plant on the line of the Lehigh Valley Railroad gets at least 2299
ten days to say nothing of what additional delay there might be in taking coal from the storage plant to the point of destination.

Cross-Examination by Mr. Boles:

Q. You testified before the Interstate Commerce Commission, Mr. Kahn, in the case of the Plymouth Coal Company against the Lehigh Valley Railroad Company, Docket No. 5905, did you not? A. I believe so.

Q. That case has not yet been decided? A. I don't 2300
think so.

Q. Did that case involve your contention as to the demurrage tariff of the Lehigh Valley Railroad as in operation at Perth Amboy? A. I could not tell from the number; I don't know just how those cases are numbered, so I could not answer that correctly. We have a case on reparation and rates and also on demurrage.

Q. You have only one case in which you ask that you be given reparation on the same basis as Meeker was given reparation in his suit? A. Yes.

2309 to be with a transportation line, the particular transportation line that owns the boat.

Q. That is, this big fleet of coal barges that are operated around the Harbor known as tramp barges? A. No, they are not known as tramp barges; they are simply known as New York Harbor boats.

Q. And owned by—— A. Transportation lines as well as individuals.

Q. Did the $1,800 which you expected to accrue in the near future include the vessel demurrage? A. No, sir.

2310 Q. When do you expect it to accrue? A. I expect that our bills will approximate that amount during the month of July.

Q. Why don't you unload the coal? A. Why don't we unload the coal?

Q. Yes. A. We expect orders for certain sizes that flow out more freely than these other sizes that would be loaded in the boats.

Q. Why aren't the shipments made in accordance with the trade demands as to the different sizes? A. For the simple reason that we send our coal down here to be

2311 consigned out as the trade will warrant.

By Mr. Machen:

Q. Do you make every effort to avoid incurring demurrage? A. We certainly do; it is not to our interest to incur one dollar of demurrage when we can avoid it.

William T. Grier, recalled in rebuttal, testified as fol-

2312 lows:

Direct Examination by Mr. Machen:

Q. Mr. Grier, have you looked up the tariffs which you referred to from the collieries on the Central Railroad of New Jersey to points on the Lehigh Valley Railroad? A. Yes.

Q. These are in addition to the tariffs I. C. C. D-508 and supplement 14 thereto, which was offered in connection with your previous testimony? A. Yes.

Q. Will you please state briefly for the record what 2313
these tariffs are; that is, the point from which they apply and the point of destination? A. I. C. C. A. A. 27, Central Railroad of New Jersey, only applies from Alden colliery, Pennsylvania, to Suspension Bridge, New York on shipments destined for Toronto, Ontario. Central Railroad of New Jersey, I. C. C. A.-283 applies from Lee colliery, located at Lee, Pennsylvania on the Central Railroad of New Jersey, to Perth Amboy, New Jersey, in connection with the Lehigh Valley Railroad.

Q. The first applies only on shipments for transship- 2314
ment by way of rail to Toronto, is that correct? A. Yes.

Q. And the second applies to Perth Amboy local delivery? A. That is correct.

Q. What is the third? A. Central Railroad of New Jersey issue A. L. 85, applying on anthracite coal from Hadley colliery, Pennsylvania to Pittston, Pennsylvania, in connection with the Lehigh Valley Railroad. Central Railroad of New Jersey tariff A. L.-21, applying on anthracite coal from Sugar Notch, Pennsylvania, to Montrose, Pennsylvania, in connection with the Lehigh Valley Railroad. Central Railroad of New Jersey tariff 2315
I. C. C. A. 284, applying from the collieries, washeries and stations located on the Central Railroad of New Jersey to points on the National Docks Railway between 28th Street, Bayonne, New Jersey, and Wayne Street, Jersey City, New Jersey, the National Docks Railway being part of the Lehigh Valley system.

Q. Has the Central Railroad of New Jersey trackage rights over the National Dock Railway? A. Yes.

Q. Then these are the only tariffs in effect from collieries on the Railroads other than the Lehigh Valley as 2316
to points on the Lehigh Valley except the Lehigh Valley tariffs I. C. C. D-508 as modified by supplement No. 14? A. No, sir; the Pennsylvania Railroad have a few.

Q. Where are those? A. I haven't got copies of all of them. Here is the list. (Handing counsel paper.)

Q. What are the Pennsylvania tariffs that you refer to? A. A. I. C. C. 363, making rates from various collieries on the Pennsylvania Railroad; Delaware & Hudson Company, and Delaware, Lackawanna & Western

2317 Railroad to Buffalo, New York, and Suspension Bridge, New York.

Q. For local delivery or transshipment? A. Local delivery.

Q. Then these are all the tariffs in effect from collieries in the anthracite region on railroads other than the Lehigh Valley to points on the Lehigh Valley Railroad, is that so? A. I believe that is correct, yes.

The Witness: Pennsylvania Railroad tariff A. A. I. C. C. 363, applies to Buffalo, New York, the reshipment by rail to Buffalo, New York, f. o.
2318 b. vessel and to Suspension Bridge, New York for reshipment by rail. Pennsylvania Railroad rate order No. D08177 applies to the rate from Lykens, Pennsylvania, to South Bethlehem, Pennsylvania on anthracite coal.

Mr. Machen: We offer in evidence on behalf of the Government articles 16 and 17 of the Constitution of Pennsylvania, 1874, and ask that they be printed for the convenience of the Court and counsel, recognizing, of course, that the Court
2319 takes judicial notice of the provision of the Constitution without proof.

Mr. Boles: I object to the offer on the ground of the incompetency and irrelevancy of the sections, particularly in the light of the decision in *Hay* v. *Commonwealth*, 82 Pennsylvania.

Mr. Warren: I object to any offer of extracts from the constitution, conceding, of course, the right of the Government to utilize them in argument, as the statutes of Pennsylvania may be
2320 competent evidence for legitimate purposes.

Marked **Government Exhibit No. 149.**

Mr. Machen: We offer in evidence the answer of the Lehigh Valley Railroad Company to question No. 6, propounded by the Interstate Commerce Commission to the Lehigh Valley Railroad Company and other carriers in the matter of the application for the general five per cent. increase lately pending before the Commission. We have had abstracted the only portions of the answer

which we desire to have printed among the ex- 2321
hibits in this case, and I ask that they be printed accordingly.

Marked **Government Exhibit No. 150.**

Mr. Boles: I will admit the correctness of the answer to question No. 6, but object to the offer on the ground that it is incompetent and irrelevant in this case.

Hearing adourned to Thursday, August 6th, 1914, at 10 o'clock A. M. 9322

United States vs. Lehigh Valley Railroad Company.

New York, August 6th, 1914.

Hearing resumed pursuant to adjournment.

Appearances as before.

Lewis A. Tompkins, recalled, on behalf of the Lehigh Valley Coal Sales Company, testified as follows: 2323

Direct Examination by Mr. Warren:

Q. Mr. Tompkins, did you verify **Lehigh Valley Coal Sales Company Exhibit No. 20,** which I asked you to do the other day, referring to the accounts purchased from the Lehigh Valley Coal Company? A. I did.

Q. Is this statement correct according to your records? A. It is.

2324

William T. Grier, recalled in rebuttal on behalf of the Petitioner, testified as follows:

Direct Examination by Mr. Machen:

Q. You testified yesterday to the existence of a joint rate on anthracite coal from the collieries on the Central Railroad of New Jersey to points on the National Docks Railway, which is a subsidiary, I believe, of the Lehigh Valley system? A. Yes.

2325 Q. Is there a similar tariff from points on the Pennsylvania Railroad to points on the National Docks Railway? A. Yes, sir.

Q. What is that tariff? A. Pennsylvania Railroad A. A. I. C. C. 318.

Q. And what are the stations to which it applies? A. Communipaw, New Jersey; Bayonne, New Jersey; Constable Hook, New Jersey.

Q. Please look at the paper which I now hand you and state what it is? A. Lehigh Valley Railroad tariff I. C. C. D.-594. This is what we call our mileage tariff,
2326 used in the absence of any other published tariff that can be applied.

Q. That is to say, if there is no other tariff which can be applied on a shipment of anthracite coal this mileage tariff is applied? A. Yes, it is an emergency tariff.

Mr. Machen: We offer in evidence this tariff.

Marked **Government Exhibit No. 151.**

Q. Let me see if I understand you correctly? If a
2327 shipper of anthracite coal from a colliery on some railroad other than the Lehigh Valley Railroad in one of the three anthracite coal regions, namely, Wyoming, Lehigh or Schuylkill, desires to ship anthracite coal to a point on the Lehigh Valley Railroad, there are only four ways in which he can get there; namely, one under tariff I. C. C. D-508, a copy of which was filed in evidence by the Government yesterday; 2, under the Pennsylvania Railroad tariff and the Central Railroad of New Jersey tariffs, to which you testified yesterday, including also the Pennsylvania Railroad tariff which
2328 you have just mentioned this morning; 3, the switching tariff, a copy of which was offered in evidence by one of the defendants, and, 4, the mileage tariff which has just been offered in evidence by the Government.

A. Yes.

Q. Did you make a search in your records for the division sheet showing the division between the Lehigh Valley Railroad and the Delaware, Susquehanna & Schuylkill Railroad applicable prior to 1905 on a shipment of anthracite coal from a colliery on the Delaware, Sus-

quehanna & Schuylkill to a point on the Lehigh Valley Railroad for local delivery? A. I had my chief clerk do it, yes. 2329

Q. Did you find it? A. No, sir.

Mr. Wheaton: The tabulation of prices which the Government has asked Mr. Tompkins to furnish, showing the f. o. b. prices received by the Lehigh Valley Coal Company for anthracite coal at tidewater, New York, as far back as the records enable him to go, is to be received in evidence and may be handed to the stenographer for the record as soon as completed and marked **Government Exhibit No. 152.** 2330

GOVERNMENT RESTS.

ALL DEFENDANTS REST.

The Examiner: On August 20th, 1914, at two o'clock P. M., at the office of the Examiner, 52 Wall Street, a hearing will be be held before him at which should be submitted by all counsel such amendments, corrections and so forth as they desire to be made by him to the minutes, as to which the Examiner will certify to the record herein. 2331

Mr. Warren: To which I object and say the Examiner has made a date as to which I have already advised him I shall not be in the city and shall not have an opportunity to appear and protect our rights, but I ask him to fix the time at which I can be present, which will not be before September 8th, and I shall not be prepared—that is, I don't know that I shall be prepared to delegate to anybody the correction of minutes, and as I have been sitting through the entire month of July to speed this action and close the testimony, I will ask the right, either from the Examiner or the Court, to be heard before he corrects any of my testimony at the suggestion of any other counsel. 2332

Mr. Boles: I make the same statement and also state I have given notice at the very first meeting that I had made my plans to be away during the month of August and it is too late for me to change them now.

2333 Mr. Warren: And I made the statement to the counsel for the Government that I would attend this case and that if we agreed to go on until the 7th of August to complete the testimony on both sides that we then could have the balance of the month to ourselves.

The Examiner: To which the Examiner replies that the date is set at the request of Government's counsel in view of the failure to agree as to any other date, and it seems reasonable time in which counsel can prepare their suggestions and amendments and corrections, and
2334 submit them either personally or by representative to me at the place and time designated.

Mr. Machen: The Counsel for the Government are very anxious to accommodate the counsel for the defendants by postponing the date for settlement of any disagreements that may arise between them as to the corrections in the testimony until the 9th day of September, and express a readiness to do so provided the United States Attorney for the Southern District of New York, who is the local representative of the Government in this case, will, by himself or his deputy, state
2335 that by so doing they will not postpone the hearing of the case, and provided that in that event it be understood that the printing of the galley proofs be proceeded with at once, without awaiting the settlement of the minutes and then correction shall be made in the galley proof as well as in the stenographer's minutes, and, therefore, I ask that the Examiner allow me to accommodate the counsel for the defendants by asking for a postponement from August 20th, until September 9th, if I find after consultation with the District Attorney
2336 that such course is proper.

The Examiner: The Examiner states that if between now and the 20th of August the parties or their representatives come to an agreement as to another date it will be perfectly satisfactory to him, and he will adjourn it from the 20th of August to such date as he is fixed by mutual arrangement.

The hearings were thereupon closed.

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